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Nuclear Energy Institute (NEI)

TO:

Chairman Meserve

FOR SIGNATURE OF : ** PRI ** CRC NO: 02-0345

Chairman Meserve

DESC:

ROUTING:

Combined Licenses Contain ITAAC on Operational
Programs (SECY-02-0067)

Travers
Paperiello
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DATE: 05/15/02

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AUTHOR: Joe Colvin
AFFILIATION: NEI
ADDRESSEE: Richard Meserve
SUBJECT: NEI's concern with the proposal in SECY -02-0067 that Part 52 combined licenses (COLs) contain ITAAC on operational programs.....

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NUCLEAR ENERGY INSTITUTE

Joe F. Colvin
PRESIDENT AND
CHIEF EXECUTIVE OFFICER

May 13, 2002

The Honorable Richard A. Meserve
Chairman
U.S. Nuclear Regulatory Commission
Mail Stop O-16 C1
Washington, DC 20555-0001

Dear Chairman Meserve:

The purpose of this letter is to convey the industry's strong concern with the proposal in SECY-02-0067 that Part 52 combined licenses (COLs) contain ITAAC on operational programs. We believe that programmatic ITAAC are not necessary based on the key points highlighted below and the more expansive discussions of these points included in the enclosure to this letter.

First, we disagree with the SECY paper that the Atomic Energy Act and Part 52 require ITAAC on operational programs, and that Congress and previous Commissions intended such a result. The enclosure to this letter expands on the materials we have submitted to the Commission previously and contains an excerpt from a 1991 briefing where the Commission stated that COL ITAAC should not include ITAAC on operational programs.

Second, it is not clear from the SECY why programmatic ITAAC are needed and for which programs. There are statements that such ITAAC must be sufficient to provide reasonable assurance that the COL holder has met all applicable substantive requirements. However, the SECY also states that ITAAC are required to verify the implementation of operational programs, but only in certain instances. These statements appear inconsistent. Furthermore, no examples are given of where the normal NRC oversight and inspections would no longer provide this assurance as they have in the past.

Third, NRC does not need programmatic ITAAC to determine that the content and implementation of operational programs conform to rules and regulations. In issuing the COL, the NRC will make all the findings that it made in Part 50 operating license proceedings, except the one it cannot make until after construction is substantially complete: a finding that the facility has been constructed in



The Honorable Richard A. Meserve

May 13, 2002

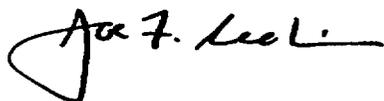
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accordance with the approved design and applicable NRC requirements. The NRC findings contained in the COL will thus include findings on the acceptability of operational programs described in the license application. Thereafter, NRC inspections and oversight will verify adequate implementation of COL-approved operational programs prior to operation, the same way they have always done.

Finally, this is not a safety issue. There is no question that the NRC has the authority under its regulations and through its oversight and inspection processes to ensure the readiness of licensee programs and processes to support safe operation, either before the plant commences operation, or at any time after. The policy question for the Commission is whether there should be programmatic ITAAC in addition to the determination during the COL review of the adequacy of operational programs, and the verification of their implementation through the existing NRC inspection and enforcement activities.

At this time, when industry efforts are focused on reducing business uncertainties associated with new nuclear plant deployment, the proper scope and use of ITAAC is key to achieving confidence in the Part 52 licensing process. Given the importance of this policy decision, the industry is prepared, should you find it useful, to participate in a public meeting with the Commission on the need for programmatic ITAAC, or to provide any clarification of our material that might aid the Commission decision on the proper scope of COL ITAAC.

Sincerely,



Joe F. Colvin

Enclosure

c: The Honorable Greta J. Dicus
The Honorable Nils J. Diaz
The Honorable Edward McGaffigan, Jr.
The Honorable Jeffrey S. Merrifield
Dr. William D. Travers
Mr. William F. Kane
Mr. Samuel J. Collins
Mr. R. William Borchardt
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NRC Document Control Desk

The Atomic Energy Act and Part 52 do not require “programmatic” ITAAC

As discussed in our May 14, 2001, *White Paper on the Scope of Combined License ITAAC*, “programmatic” ITAAC are not required as a matter of law. As a matter of policy, and fully consistent with the goals of Part 52 and the Energy Policy Act of 1992, we urge the Commission to resist the unnecessary creation of a suite of “programmatic” ITAAC.

We believe that SECY-02-0067 contains several critical mischaracterizations. For example, we disagree with the statement on page 2 that “. . . the so-called “programmatic” ITAAC . . . were included by Congress and understood by the Commission to be prerequisites for operation under a COL.” Similarly, we disagree with the statement on page 8 of the SECY that “no changes or clarifications to 10 CFR Part 52 are needed because its clear language already requires that programmatic ITAAC are required in a COL application.”

The interpretation of the scope of COL ITAAC that we believe is more appropriate was recognized by both Congress and the Commission when Part 52 was first developed. In the 1989 Statements of Consideration (SOC) for the Part 52 rule, the Commission indicates the proper focus for ITAAC, that we believe is more appropriate, with its repeated references to construction conformity with the COL as the focus of the post-construction hearing. The SOC provides no indication that the Commission envisioned additional ITAAC beyond those necessary to judge the adequacy of the constructed facility. Moreover, in a briefing on August 21, 1991, the Commission provided specific guidance that COL ITAAC not include ITAAC on operational programs. The following is an excerpt from the briefing transcript. On page 128 of the transcript, Chairman Selin asks if the other Commissioners have any questions for the staff.

COMMISSIONER ROGERS: Well, yes. I think I could ask a couple. One is I have the impression that in a sense we’re talking about two different ITAACs, although this is just one, and that is an ITAAC for design certification and ITAAC as it relates to combined operating license. I just wonder what your view on this is. There is one ITAAC the general purpose is the same when all is said and done, but in reading 178, 91-178, there really is a dual purpose here that’s referred to and I wonder if you could just help me a little bit to understand what’s your view on that.

DOCTOR MURLEY: Yes, I’ll turn to Mr. Borchardt because I did cut him off. He was going to explain a little bit of that.

There are some aspects of the final design, plant design of course, that depend on the site, like the ultimate cooling system and so forth. They will have their own acceptance criteria associated with them. So, in that sense the COL ITAAC is a much broader document than just the ITAAC that's in the final design approval.

You also asked Mr. Rasin what are these other –

COMMISSIONER ROGERS: Acceptance criteria.

DOCTOR MURLEY: -- Acceptance criteria and those would be things like the number of licensed operators that are not in the design. But they would be part of the COL ITAAC.

CHAIRMAN SELIN: Non-mechanical aspects of –

DOCTOR MURLEY: Non-design sorts of things.

CHAIRMAN SELIN: Well, not construction type. These are not construction items.

DOCTOR MURLEY: That's right.

CHAIRMAN SELIN: So, as-built doesn't answer the whole question about whether they're ready to operate.

DOCTOR MURLEY: That's right.

MR. RUSSELL: Correct.

DOCTOR MURLEY: That's correct. So, there are these others, the security system –

COMMISSIONER ROGERS: They would be just the things that you'd have ordinarily now under Part 50.

DOCTOR MURLEY: That's right.

MR. BORCHARDT: The intent of that phrase which caused so much trouble was merely to make sure that everyone understood that ITAAC doesn't operate in vacuum, that there are Part 50 requirements that are still applicable to these facilities, that we're going to look at staffing of the facility, things that are not going to be directly associated with the design.

CHAIRMAN SELIN: Emergency planning?

MR. BORCHARDT: Emergency planning is an example also.

COMMISSIONER ROGERS: Well, my concern is that we have [need] a very clear definition of what ITAAC is and what it's not and don't try to fold everything into ITAAC that involves all of the – everything in those books, that ITAAC has a specific meaning, those letters really do stand for specific things and that we not try to include in the ITAAC everything that we know in addition must clearly be satisfied to run a nuclear plant. But that we always look at the ITAAC as a consequence in a certain sense of a new design and this whole design certification process and the implementation of that new design rather than trying to fold into it all of the other requirements that we know have to be there to operate a plant.

MR. PARTLOW: That's our plan.

COMMISSIONER ROGERS: And I think we – well, I was a little troubled by the statement, I guess it was in [SECY-91-] 178 of definition of the purpose of an ITAAC that just troubled me in the discussion because – I'll just read it very quickly. "The purpose of ITAAC is to verify that the as-built plant conforms to the approved plant design." Fine, I don't have any trouble with that, "And that there is reasonable assurance that the plant will operate in conformity with the combined license, the Atomic Energy Act and applicable regulations." Well, I mean that's everything else.

I'm just a little bit worried about trying to just sweep into the ITAAC all of the other things that we know must be there. You see my point. I'm a little troubled with that because I think that ITAAC should be specific. We should be very clear on what is ITAAC and what isn't ITAAC. ITAAC isn't necessarily everything and that's why I'm a little concerned about the point that the industry folks made in that the combined operating license ITAAC compliance be the sole basis for NRC's preoperational finding under Section 52.103. I'm not quite sure what that means. To me, yes, the ITAAC has to relate to the design and implementation of that design as expected, but then everything else has to apply as well.

DOCTOR MURLEY: For example, if it is, in fact, to be the sole basis for the finding that we have to make, then information like the number of licensed operators would have to be in that document.

CHAIRMAN SELIN: Nobody intends that to be in the ITAAC.

DOCTOR MURLEY: Okay.

CHAIRMAN SELIN: The concept of the ITAAC is – well, first of all, the generic ITAAC is just that, it's a generic ITAAC. Once approved as part of the certified design, it means that the individual plant operator shouldn't have to repeat all that. He should be able to include that in that ITAAC which is part of the combined operating license plus the plant-specific. Second, is the function of the ITAAC has to do with the material condition of the plant, the as-built thing. There are a lot of items that you need to have, an operating license, which will have been submitted a part of the combined license before construction starts and those will have to be verified apart from the ITAAC.

DOCTOR MURLEY: Okay.

CHAIRMAN SELIN: There's no concept that the ITAAC covers operator readiness or emergency planning or stuff like that.

COMMISSIONER ROGERS: Yes, That's my concern as well.

CHAIRMAN SELIN: That's outside the concept. And I think the language – I completely agree with Commissioner Rogers. The language both in the staff paper and in the industry paper, hopefully one is merely responding to the other, is just a little too loosely drawn. The concept is that for the – in order to certify – really, in order to find that the plant, if properly operated, will be safe, the ITAAC should be all that is necessary. But then they have a lot of other questions that fall outside the ITAAC and I think the industry just wants to make sure that you don't slip over a hidden ball trick on them and say there are five other mechanical or material conditions they didn't look and you want to make sure that nothing in the ITAAC precludes or obviates the need to have the right number of trained operators, an emergency plan, a security force.

DOCTOR MURLEY: Yes. At this stage, I don't sense a real disagreement between the staff and the industry. I think it's a semantic –

CHAIRMAN SELIN: People are asked to sign a contract ten years in advance. They're going to be a little cagey about what they're asked to – both you and the industry.

DOCTOR MURLEY: But as we work through a specific detail, I think a lot of these issues come out because no one is disagreeing that we have to make a finding on the number of licensed operators. It's just a question of where you put it, I guess.

[End of excerpt]

The amendments to Part 52 required by the 1992 Energy Policy Act (EPACT) had no impact on and did not alter the original intent of Part 52 and the Commission

regarding the required scope of COL ITAAC, except to require ITAAC on emergency planning. Although there is no pertinent legislative history, it is reasonable to assume that Congress specified the requirement for ITAAC on emergency planning in response to the recent contentious licensing experience at the Shoreham and Seabrook plants. The requirement for emergency planning was most likely an expression of interest in ensuring that fundamental decisions of site suitability for emergency planning purposes were resolved at the COL stage; it did not portend that ITAAC were therefore also required on additional, or potentially all, operational programs.

In fact, key statements from the legislative history of the 1992 EPACT, dismissed by SECY-02-0067 as "inconsistent with the staff's construction," mirror the 1989 SOC and directly reinforce the focus on the facility as constructed. In particular, the authoritative report of the Senate Energy and Natural Resources Committee states that the purpose of ITAAC and the COL process is to enable licensing criteria to be established "against which the plant will be judged." The Committee Report further states that the COL process and ITAAC:

"...will enhance certainty for the utility building the plant by spelling out before construction begins what conditions the completed plant must satisfy in order to operate" and

"...will provide the NRC regulators objective safety [i.e., acceptance] standards with which to measure the constructed plant in deciding whether the plant is safe to operate."

This is completely consistent with the industry's position that ITAAC are, and always were, intended to focus on the determination of whether the plant was constructed in accordance with the design.

Programmatic ITAAC are not needed for NRC to make all the necessary findings and assure safety prior to plant operation.

The NRC has not relied on ITAAC in authorizing the operation of any existing plant. We agree completely in two important respects with this statement in SECY-02-0067:

"It has been the agency's practice in reviewing applications for operating licenses to make predictive findings with respect to the acceptability of operational programs and to determine prior to issuance of the operating license that the procedures are in place to correctly implement those programs. There is nothing in the legislative history [re: Part 52] which would indicate that Congress intended that the agency change its practices in this regard."

We agree that the NRC must, just as it did in Part 50 operating license proceedings, make predictive findings as part of its COL review with respect to the acceptability of operational programs, and will determine prior to operation that staffing, procedures, etc., are in place to correctly implement those programs. The NRC inspection process will continue to be effective in assessing and assuring proper program implementation. We also agree with the staff that "there is nothing in the legislative history [re: Part 52] which would indicate that Congress intended that the agency change its practices in this regard." While the COL concept within Part 52 clearly demanded a new mechanism – ITAAC – for the NRC to make its finding on the adequacy of plant construction, Part 52 does not require or intend that NRC change its historical practice for determining by inspection the acceptability of operational programs prior to initial plant operation.

Thus, while agreeing with the statement above, we disagree with the SECY-02-0067 conclusion that ITAAC must be the mechanism for verifying operational program implementation. We believe that such a significant intent would have been clearly stated by both Congress and the Commission in 1989. As noted earlier, statements from the legislative history that support the industry's interpretation are dismissed in SECY-02-0067 as "inconsistent with the staff's construction." As discussed further below, we believe the staff's "construction" is not required by statute and is inconsistent with the Commission's intent as expressed in its 1989 Statements of Consideration for the Part 52 rule and the 1991 Commission briefing cited above.

To answer questions about how – without "programmatic" ITAAC – the NRC would make its required findings and determinations of acceptability prior to operation, the following paragraphs outline the envisioned approach.

Consistent with the stated intent of Part 52, all safety issues associated with the design, site and the adequacy of operational programs will be reviewed by the NRC, subject to public hearing and resolved in the combined license proceeding. In the COL, the NRC will make all the findings that it made in Part 50 operating license proceedings, except the one it cannot make until after construction is substantially complete: a finding that the facility has been constructed in accordance with the approved design and applicable NRC requirements. The NRC findings contained in the COL will thus include findings on the acceptability of operational programs described in the license application.

Both the industry and the NRC staff envision that NRC inspections will verify adequate implementation of COL-approved operational programs prior to operation, the same way they have always done. As is the case for any licensee, if members of the public have questions about the implementation of operational programs or compliance with applicable regulations, 10 CFR 2.206 provides the mechanism for NRC consideration of those concerns. ITAAC on operational programs are not

necessary to enable NRC inspection of operational programs or to provide members of the public opportunity to address implementation concerns to the NRC.

The set of COL ITAAC that are *necessary and sufficient* under Part 52 is wholly dependent on the question of what they must be *necessary and sufficient* for. The legal review in SECY-02-0067 was focused on the issue of whether a COL ITAAC must be developed for an operational program where a determination regarding implementation is necessary to provide reasonable assurance that the facility will be operated in conformity with applicable requirements.

Required compliance with NRC regulations and NRC oversight thereof provide reasonable assurance that existing nuclear plants are operated safely. The same requirements and oversight process will provide reasonable assurance that plants licensed under Part 52 will be operated safely. The staff agrees with NEI's assessment that regardless of whether programmatic ITAAC are included in the COL, the Commission retains its authority under 10 CFR 50.100 to revoke, suspend or modify licenses for cause. It is in the broader context of all applicable requirements, NRC oversight authority and the NRC findings that will be embodied in the COL that the scope of *necessary and sufficient* ITAAC must be determined. In this broader context, it is reasonable, appropriate and in keeping with the NRC Principles of Good Regulation to conclude that, consistent with the 1992 EPACT, COL ITAAC must ensure that the constructed facility conforms to the terms of the license, as intended by the commission, and include appropriate ITACC on emergency planning.

NRC operational program inspections will be scheduled and performed as they were for the licensing of Part 50 plants. If the results indicate that the licensee's programs and performance do not provide adequate protection of public health and safety, that information would be provided to the EDO and Commission prior to the scheduled date of fuel load, and the NRC would take appropriate enforcement action to prohibit or delay fuel load pending appropriate corrective action. Conversely, if no significant violations are identified that would warrant delaying fuel load, it is expected that this result would also be communicated to the EDO and Commission prior to fuel load.

The SECY-02-0067 view that "programmatic" ITAAC are required is based on a parsing of the requirement on the scope of COL ITAAC that differs from the understanding provided by the Commission in 1989.

In our May 14, 2001, white paper and related discussions with the NRC staff, we have emphasized that ITAAC must be necessary and sufficient to assure that the facility was constructed in conformance with the approved design and applicable NRC requirements.

The SECY-02-0067 interpretation that “programmatic” ITAAC are required is based largely on the view that the requirement governing the scope of COL ITAAC is actually two separate requirements. SECY-02-0067 states that COL ITAAC must be *necessary and sufficient* to provide reasonable assurance that (1) the plant has been constructed in accordance with applicable requirements, and (2) that the facility will be operated in conformity with those requirements. However, it is clear from the 1989 SOC that the Commission did not share the staff’s construction of these as two separate requirements on the scope of COL ITAAC:

[Also,] under section 185 of the AEA, the Commission must find prior to facility operation, that the facility has been constructed and will operate in conformity with the application and the rules and regulations of the Commission. This statutory finding, in the context of Subpart C of this rule, translates into two separate but related regulatory findings: that [1] compliance with the acceptance criteria in the licensee will provide reasonable assurance that the facility has been constructed and will operate in accordance with the Commission’s requirements, and [2] that the acceptance criteria have in fact been satisfied.

While the Commission also speaks of two separate requirements, it is significant that the Commission saw a single requirement on the scope of COL ITAAC, while under the SECY-02-0067 construction, there are two. (The second requirement referred to by the Commission is that the acceptance criteria have in fact been met. This is not a requirement on the scope of COL ITAAC.) Later in the SOC, the Commission reinforces its construction when it states:

As a matter of logic, every conceivable contention which could be raised at that [post-construction hearing] stage would necessarily take one of two general forms. It would allege either *that construction had not been completed—and [thus] the plant would not operate—in conformity with the terms of the combined license, or that those terms were themselves not in conformity with the Atomic Energy Act and pertinent Commission requirements.* [Emphasis added]

The Commission’s construction places the emphasis for ITAAC on the condition of the facility and its ability to support safe operation in accordance with applicable NRC requirements.

The existence of ITAAC in the design certifications on the Design Reliability Assurance Program has no bearing on the “programmatic” ITAAC policy issue.

The stated purpose of the Design Reliability Assurance Program (DRAP) is to ensure that the design of risk-significant systems, structures and components is

consistent with the functions and reliabilities assumed in the design certification. SECY-02-0067 bases, in part, its position that “programmatic” ITAAC are required on the existence of a DRAP ITAAC in each of the existing design certifications. In this regard, the following points are pertinent:

First, it should be noted that the DRAP ITAAC was imposed on the design certification applicants late in the design certification process over the strong objections of the applicants and the industry. The objections were based on the view that a DRAP ITAAC is not needed because the goal of DRAP is fundamental to the design process and the requirement for the detailed design to conform to the design certification. The industry continues to consider the DRAP ITAAC to be unnecessary.

Further, as is evident from Attachment 3 of SECY-02-0067, the DRAP ITAAC is very much hardware focused. As such, it is hardly a precedent for a broad range of ITAAC on operational programs as envisioned by SECY-02-0067.

In addition to satisfying all ITAAC, licensees must be in compliance with applicable NRC requirements prior to fuel load/operation, including applicable license conditions, technical specifications, regulations and orders.

The SECY indicates concern that, absent ITAAC on operational programs, the NRC would be unable to stop fuel load and operation after the Commission makes its Section 52.103(g) finding – even in the face of a significant non-compliance by the licensee with other NRC regulations and requirements. SECY-02-0067 reflects this view when it states on page 7 that, “the Commission’s ability to prohibit fuel load after construction is completed is tied to the ITAAC.” Apparently, the staff believes that, absent “programmatic” ITAAC, the NRC could issue an order to prohibit operation under such circumstances only *after* authorization is given to start up based on the Commission’s ITAAC finding. We believe this conclusion is incorrect. Given that a Part 52 COL is equivalent, with respect to operational programs, to an operating license issued under Part 50, NRC clearly has the authority to prohibit startup if program deficiencies so warrant. Indeed, elsewhere on the same page of the SECY it is recognized that “regardless of whether programmatic ITAAC are included in the COL, the Commission retains its authority under 10 CFR 50.100 to revoke, suspend or modify licenses for cause.”

SECY-02-0267 is not clear about the envisioned scope and purpose of programmatic ITAAC

The SECY is not clear about the scope and purpose of programmatic ITAAC. For example, the SECY states that:

“The Energy Policy Act of 1992 and Part 52 [Sections 52.79(c) and 52.97(b)(1)] clearly require that ITAAC must verify that applicable regulations have been met before a facility can be authorized to operate.”

“Section 185.b requires that ITAAC be “sufficient” to provide reasonable assurance that the COL holder has met all applicable substantive requirements.”

Assuming that “substantive” requirements are those having a nexus to safety, these statements suggest a legal imperative to establish ITAAC corresponding to the bulk of NRC regulations.

Elsewhere, the SECY states:

“... ITAAC [are required on operational program implementation] *when the staff determines that verification of such implementation is necessary for a finding of reasonable assurance that the facility will be operated in conformity with the regulations.*” [Emphasis added]

“Therefore, section 185.b requires ITAAC to verify the implementation of operational programs *in certain instances ...*” [Emphasis added]

“The staff will review the historical record to determine what programs may need ITAAC under Part 52.”

These statements suggest that programmatic ITAAC are not a legal requirement “to provide reasonable assurance that the COL holder has met all applicable substantive requirements” after all, but rather that they are required, based on some unarticulated criteria, to allow for a determination of the adequacy of certain specific programs.

A Part 52 COL is equivalent, with respect to operational programs, to an operating license issued under Part 50. The existence of NRC regulations obviates the need for redundant ITAAC requirements on operational programs. The lack of need for ITAAC on operational programs is demonstrated by the historical effectiveness of NRC inspection processes for assuring acceptability of operational programs prior to plant operation. To the extent that ITAAC on a subset of operational programs are thought to be necessary, it is unclear how they would relate to the normal NRC oversight and inspection processes that are already the bases for providing reasonable assurance that current plants will be operated safely.

The list of operational programs on which SECY-02-0067 envisions ITAAC does not clarify the basis for “programmatic” ITAAC. This is because:

- This list identifies programs for which implementation and inspection guidance are well established and the ability of NRC to determine acceptability is well demonstrated
- For the maintenance rule, the containment leak rate testing program, and inservice inspection and testing programs, there will be little in the way of meaningful implementation for the NRC to assess prior to operation
- In a 1993 draft SECY (forerunner of SECY-00-0092), the staff presented a compelling argument against the need for ITAAC on the quality assurance program
- Equipment qualification is already addressed by ITAAC for all systems containing Class 1E equipment

This is not a safety issue.

Under either the industry or SECY-02-0067 interpretation, there is no question that the NRC has the authority under its regulations and through its oversight process to ensure the readiness of licensee programs and processes to support safe operation. The policy question for the Commission is whether there should be “programmatically” ITAAC in addition to traditional NRC inspection and enforcement of licensee compliance with applicable regulations. “Programmatically” ITAAC would add no value in terms of enhanced safety; however, they could have significant adverse implications on other policy objectives. At best, “programmatically” ITAAC would be redundant to applicable NRC regulations; at worst, they would be conflicting and confusing, and would thus introduce significant uncertainty into a process for which increased predictability and stability and the early resolution of issues are major policy objectives. Considering that most new plants are likely to be located at existing sites, with COL applications referencing existing programs in place at the site, the potential for “programmatically” ITAAC to impose requirements on new plants that conflict with requirements on existing units is particularly problematic for prospective COL applicants. Thus “programmatically” ITAAC are unnecessary from a legal or safety perspective and are contrary to both the NRC’s Principles of Good Regulation and the stated objectives of Part 52.

COL ITAAC must provide stability and certainty and a predictable transition to operation under Part 52

Whatever the Commission determines to be the appropriate scope of COL ITAAC, the Commission should ensure that the other policy objectives of Part 52 are not compromised, including establishment of a predictable, stable and transparent licensing process and the early resolution of safety issues. Consistent with an

ITAAC focus on the constructed facility, the following are a number of vital attributes that all COL ITAAC should reflect in order to ensure adequate certainty and stability in the process, and predictable transition to operation under Part 52.

- COL ITAAC should be as clear and objective as possible so that they can be clearly understood by all parties and do not introduce undue uncertainty into the Part 52 licensing process.
- While Part 52 provides no guarantee that all ITAAC will be completely objective, COL ITAAC clearly must not involve subjective determinations of implementation effectiveness, adequacy, etc, as these would defeat the purpose of ITAAC to enhance certainty by clearly specifying up front the acceptance criteria that the completed facility must meet.
- COL ITAAC should be written so that they may be satisfied, i.e., acceptance criteria may be met, despite the existence of deficiencies that are not material to the ITAAC determination. As discussed in the industry's Nov. 20, 2001, draft white paper on ITAAC implementation, if a deficiency is material to the ITAAC determination, appropriate corrective action must be taken before the ITAAC can be closed out. If there are no deficiencies that are material to the ITAAC determination, the NRC staff would be expected to make the required Section 52.99 finding of ITAAC completion.
- COL ITAAC should not provide a mechanism for reconsideration of matters resolved in the COL, e.g., the adequacy of the design, site, or operational programs. This is of particular concern in light of the potentially broad scope of COL ITAAC envisioned in SECY-02-0067. Such a scope of ITAAC creates the potential for numerous matters resolved at COL to be subject to further NRC review and public hearing in the critical post-construction period. This would be contrary to the Commission's expressed intent in the 1989 SOC.
- COL ITAAC should not conflict with other NRC requirements with which the licensee must also comply.
- COL ITAAC should not provide a mechanism for transforming regulatory guidance into regulatory requirements for the licensee.

In connection with defining the scope of required COL ITAAC, it is important to reiterate the criteria prescribed by Part 52 under which a hearing may be requested by members of the public and granted by the Commission concerning matters of ITAAC noncompliance. Part 52 also provides that the Commission may authorize interim operation pending consideration of any hearing request, provided that there is reasonable assurance of adequate protection of public health and safety. The industry expects that unless an ITAAC deficiency is judged by the Commission to be

so significant that the plant cannot be operated safely, the Commission would use its authority to allow interim operation.