UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

SECRETARY

May 6, 2003

COMMISSION VOTING RECORD

DECISION ITEM: SECY-02-0077

TITLE: PROPOSED RULE TO UPDATE 10 CFR PART 52, "EARLY SITE PERMITS, STANDARD DESIGN CERTIFICATIONS, AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS"

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of May 6, 2003.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:
1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Diaz
Commissioner Dicus
Commissioner McGaffigan
Commissioner Merrifield
OGC
EDO
PDR

VOTING SUMMARY - SECY-02-0077

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. DIAZ	X				X	5/23/02
COMR. DICUS	X				X	7/14/02
COMR. McGAFFIGAN	X				X	4/22/03
COMR. MERRIFIELD	X				X	12/12/02

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on May 6, 2003.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER DIAZ

SUBJECT: **SECY-02-0077 - PROPOSED RULE TO UPDATE 10 CFR PART 52, "EARLY SITE PERMITS, STANDARD DESIGN CERTIFICATIONS, AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS"**

Approved XX Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

See attached comments.

SIGNATURE

May 23, 02
DATE

Entered on "STARS" Yes X No ____

Commissioner Diaz' Comments on SECY-02-0077

I approve the request to publish the proposed revision in the Federal Register. Many good changes to part 52 are contained in this proposed rulemaking; however, I do not necessarily agree with all the changes that are proposed.

I would have preferred to see the Industry Petitions addressed in this proposed rulemaking; however, since I believe that we need to get on with this rulemaking, I am approving the proposed rule for publication. Nonetheless, I believe that the Industry Petitions for rulemaking should be consolidated into this rulemaking effort, if they are approved, even if re-publication is necessary. I believe that this will not unduly delay a final rulemaking.

I disagree with using a "minimal increase" threshold rather than a "substantial increase" threshold for changes in severe accident-related information. The rule should retain the "substantial increase" threshold for severe accident-related information. In addition, the duration of a Final Design Approval should be changed from five to 15 years to correspond to the duration of design certification. These two changes should be made prior to publishing the proposed revision in the Federal Register.

I do not believe that it is appropriate to begin the 40 year license term at the date of issuance of the combined operating license. A high priority should be placed on resolving this item before the final rule is issued.

I look forward to the public comments on these and other issues associated with this proposed rule change, as well as the staff resolution of the comments.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER DICUS

SUBJECT: **SECY-02-0077 - PROPOSED RULE TO UPDATE 10 CFR PART 52, "EARLY SITE PERMITS, STANDARD DESIGN CERTIFICATIONS, AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS"**

Approved __X__ Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

See attached comments.

Greta Joy Dicus
SIGNATURE

July 14, 2002
DATE

Entered on "STARS" Yes __X__ No ____

COMMISSIONER DICUS' COMMENTS ON SECY-02-0077

I approve the staff's request to publish in the Federal Register the proposed revision to the requirements in 10 CFR Part 52 and other related sections of the regulation in Title 10 subject to the following.

1. Since the staff's recommendations on two petitions for rulemaking should be submitted to the Commission by September 2002, I believe it is prudent, based on resources and efficiency, that the two petitions be assessed and incorporated into this rulemaking.

2. I do not support the staff's proposed changes to the current §§ 52.83 and 52.97 with regards to beginning date for the term of a combined license. As I stated in my vote on COMSECY-98-004 on combined license review process, I believe that the Commission should continue to support the current duration of the combined license as described in the current 10 CFR 52.83. That is, the 40-year license begins when the Commission finds that the prescribed acceptance criteria are met pursuant to 10 CFR 52.99. Not too many years ago, the NRC and licensees expended considerable effort in amending operating licenses to "recapture" the years spent constructing some power plants to assure they had a full 40 years of operation. The validity of our combined license rule has been upheld. We should, therefore, not change the current rule language without good reason. Additionally, both the House and Senate Energy Bills have proposed words which would clarify the combined license period (as it was originally intended). According to OCA, it is very likely that the proposed clarification words will be enacted with the Energy Bill. At this time, no licensee is impacted by these regulations and no one will be impacted in the near future. Therefore, I recommend that the current §§ 52.83 and 52.97 remain unchanged until such a time that the statute is clarified or a licensee is impacted by the regulation.

3. With respect to the proposed wording of 52.211(d)(1), the last sentence should not include "construction permit, duplicate design license, or" since that section of the proposed rule is within the subpart on combined licenses. Therefore, proposed §52.211(d)(1) should only refer to combined licenses. Additionally, the last sentence of §§ 52.39(b) and 52.39(c) should include "duplicate design license" based on the same reasoning.

I would like to commend the staff on the high quality product exhibited in SECY-02-0077. I recognize the amount of time and effort that was expended on this rulemaking by the staff and our stakeholders. I believe that this effort has yielded a regulation and regulatory framework that is suitable for effective and efficient for the reviews of the expected early site permits and other associated reviews, if and when the staff receives new reactor license applications.

gjd
7-14-02

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MCGAFFIGAN

SUBJECT: **SECY-02-0077 - PROPOSED RULE TO UPDATE 10 CFR PART 52, "EARLY SITE PERMITS, STANDARD DESIGN CERTIFICATIONS, AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS"**

Approved ✓ w/comments Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

See attached comments.

Edward McGaffigan Jr.
SIGNATURE

April 22, 2003
DATE

Entered on "STARS" Yes ✓ No ____

Commissioner McGaffigan's Comments on SECY-02-0077

I approve the staff's recommendation to publish the notice of proposed rulemaking, but I agree with the comments of my colleagues on the Commission that certain changes should be made prior to publishing the documents in the Federal Register.

Specifically:

1) The current "substantial increase" threshold should be retained (and not changed to "more than a minimal increase" as proposed in SECY-02-0077) for changes in severe accident-related information.

2) The existing requirement for the NRC to publish successful ITAAC completion (section 52.99) should be retained, rather than the change proposed by the staff (proposed section 52.229) that the NRC publish instead notices only of the licensee's notification that the licensee believed that ITAACs had been successfully completed. I completely concur in former Chairman Meserve's comments on this matter.

3) The staff should continue its efforts to bring about the statutory changes necessary to allow licensees to operate facilities that gain an operating license under Part 52 for at least 40 years from the time acceptance criteria are met. However, I believe that we have no choice under the existing statute but to propose the changes the staff is including (proposed sections 52.215 and 52.227(e)). I hope that Congress will have adopted our proposed correction by the time this rule is finalized.

I also agree with the edits proposed by former Chairman Meserve, and attach them to my vote.

EMcG

52.263	App. N, Paragraph 1
52.265	App. N, Paragraph 2
52.265(c)	App. N, Paragraph 3
Subpart M - Enforcement	
52.401	52.111
52.403	52.113

III. Discussion of Substantive Changes

A section-by-section analysis that explains the purpose and meaning of all sections in 10 CFR Part 52 will be provided in the supplementary information for the final rule. The proposed rule makes the following substantive changes:

A. 10 CFR Part 52, Early Site Permits, Standard Design Certifications, and Combined Licenses for Nuclear Power Plants

(1) General Provisions

The proposed rule would amend § 52.3 to add definitions for "modular design" and "prototype plant" to the current 10 CFR Part 52. A definition of modular design is added to explain the type of modular reactor design to which ~~that~~ the Commission intended ~~is referring to~~ to refer in the second sentence of the current § 52.103(g) (proposed § 52.231(g)). This special provision for modular designs was added to 10 CFR Part 52 to facilitate the licensing of nuclear plants, such as the Modular High Temperature Gas-Cooled Reactor (MHTGR) and Power Reactor Innovative Small Module (PRISM) designs, that consisted of 3 or 4 nuclear reactors in a single power block with a shared power conversion system. During the period that the power block is under construction, the Commission could separately authorize operation for each nuclear reactor when each reactor and all of its necessary support systems were completed. In a letter dated November 13, 2001 (comment A), NEI stated that "Part 1 of the definition would need to be revised for this purpose so that it does not describe typical multi-unit sites. The NRC staff should reconsider the need to define this term at all." The Commission disagrees with NEI's recommendation because the term "modular design" needs to be defined to aid future use of

(proposed § 52.211). In some cases, it appears that different terms are used to apply to the same concept, *e.g.*, "site parameters," and "postulated site parameters." In other cases, information which would appear to constitute "site parameters" as used in the current rule is not characterized as such, *e.g.* § 52.17(a)(1)(i) through (viii).

To address these inconsistencies, the Commission is considering amending 10 CFR Part 52, including proposed Subparts A, D, and G, to use three terms: "site characteristics," "site parameters," and "design parameters," to set forth in clear and unambiguous terms the Commission's requirements on early site permits, design certifications, and combined licenses. "Site characteristics" are to be the actual physical and demographic values for the site, *e.g.*, the ground force acceleration of a defined earthquake, flood level, or the atmospheric dispersion value. The "design parameters" for an early site permit would include the postulated values for thermal power level, radiological effluents, and type of cooling system for the facility. "Site parameters" for a design certification would include the postulated values for floods, ground force acceleration of a postulated earthquake, and tornado wind speeds. The amendment to 10 CFR Part 52 would: (1) require the Commission to specify site parameters and design parameters when issuing early site permits; (2) require the design certification rule to specify the site parameters and design parameters for the design; (3) require a combined license applicant referencing an early site permit to demonstrate that either the design of the nuclear power plant or the site parameters and design parameters of a referenced design certification rule, fall within/meet the design and site parameters of the early site permit; and (4) require a combined license applicant referencing a design certification rule to demonstrate that the site parameters and design parameters of the design certification rule fall within/meet either: (i) the site characteristics of the site, or (ii) the site parameters and design parameters of a referenced early site permit. The Commission will consider any comments submitted in response to

combined license under § 52.83 would be longer than 40 years. The AEA, as currently written, does not give the Commission authority to issue a combined license expiring 40 years from the date that the Commission makes a finding that all ITAAC have been met. Instead, Section 103.c. of the AEA states that a license issued under that section shall be "issued for a specified period, as determined by the Commission . . . *but not exceeding forty years*" (emphasis added). Because a combined license is a single license,[1] its term cannot exceed 40 years from the date of its issuance. Nothing in the Energy Policy Act of 1992 (1992 EPA), Pub. L, 102-486, which sets forth the requirements for issuing combined licenses, suggests that the 40-year limit in Section 103.c. does not apply to combined licenses issued under Section ~~169.a.(1)(B)~~ 185b. The legislative history of the 1992 EPA does not disclose any congressional consideration of the issue. Accordingly, the Commission concludes that Section 103.c. of the AEA limits the term of a combined license to 40 years from the date of issuance of the combined license, and a correction to the language in the current § 52.83 is necessary. The Commission proposes to

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[1]When 10 CFR Part 52 was originally promulgated, the Commission cited Section 161(i) of the AEA as authority to issue regulations governing combined licenses. That section authorizes the Commission to, inter alia, "combine in a *single* license one or more of such activities" [for which a license is required by the AEA] (emphasis added). This AEA provision was apparently included in response to testimony submitted to the Joint Committee on Atomic Energy complaining about the "multiplicity of licenses" required under the proposed legislation and seeking revisions that would authorize the Commission to issue a "*single license* to cover all integrated operations" (emphasis added). See Hearings Before the Joint Committee on Atomic Energy ("Hearings"), 83rd Congress, 2d Sess. 79 (1954) (testimony of Walker L. Cisler, President, Detroit Edison Co.); see also Hearings at 112-113 (testimony of Paul W. McQuillen, Chairman of the joint legal committee for Dow Chemical-Detroit Edison-Power Reactor Development Corporation), 352 (testimony of F.K. McClune, General Manager, Atomic Products Division, General Electric Company), 64 (testimony of E. Blyth Stason, Dean, Michigan Law School). The 1992 EPA modified ~~Section 189~~ Sections 185 and 189 of the AEA to add specific requirements for the issuance of combined licenses and prerequisites for operation under a combined license, but did not alter either Section 161.i. or Section 103.c. The Senate Report on S.1220 (the only report to discuss the nuclear licensing provisions) stated: "The new subsection b. [of Section 189] reaffirms the NRC's existing authority and sets out specific requirements governing the issuance of a combined license (S. Rep. No. 102-72, 102nd Cong. 2d Sess. at 292). Thus, it appears that Congress intended to reconfirm the NRC's authority under the preexisting provisions of the AEA to issue combined licenses, and did not intend to change the 40-year limit in Section 103.c. on the term of a license.

safety hazard" by virtue of the application being referenced in a nuclear power plant licensing proceeding. Therefore, the Commission does not believe that adopting the regulatory overlay of Part 21 during the pendency of an early site permit application is necessary to effectuate the Commission's regulatory responsibilities under the AEA, as amended, including providing reasonable assurance of adequate protection to public health and safety or common defense and security.

The Commission does not believe that Part 21 should apply to the early site permit holder after the early site permit has been issued, but before the holder has referenced the permit in a license application[5]. With one exception, the early site permit does not authorize any action by the holder with respect to the construction or operation of a nuclear power plant. The exception is when the early site permit authorizes the holder to conduct the site preparation activities permitted under 10 CFR 50.10(e)(1) (commonly referred to as limited work authorization-1, or LWA-1, activities). However, these activities are related to site clearing and preparation, and do not permit any construction (including subsurface preparation) for "structures, systems and components which prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public." Thus, the conduct of LWA-1 activities do not appear to have any reasonable possibility of resulting in a "substantial safety hazard." Furthermore, the inherent nature of an early site permit is site-specific and not susceptible to generic or wide-ranging applicability. For these reasons, the Commission

[5]The Commission would not permit a license applicant to reference an early site permit which it does not hold (or has rights to the permit contingent upon a NRC decision to issue a license whose application references the early site permit). To otherwise permit referencing of an early site permit by a non-holder would destroy the commercial value of the permit, and would prevent any entity from seeking an early site permit. This would frustrate the Commission's regulatory objective of providing early regulatory approval of siting, emergency preparedness, and environmental matters. Since the early site permit is a license, the relevant requirements of Part 21 are those applicable to a licensee.

proposes that Part 21 should not apply to an early site permit holder until the permit is referenced by a license applicant.

Once an early site permit holder references the permit in a license application, the Commission believes that the holder should be subject to Part 21. The Commission's safety review of a license application referencing an early site permit is limited in accordance with §§ 52.39 and 52.79 (proposed § 52.211), under the precept that the site parameters, terms, and conditions which define the envelope for safe siting of a nuclear power plant have been determined by the NRC in the early site permit proceeding. If the early site permit holder discovers a significant safety concern with respect to its site (*e.g.*, that the specified site parameter for seismic acceleration is less than the projected acceleration due to new information), the concern should be reported to the NRC so that it may be considered in the review of the application referencing the early site permit. This reporting attains special importance given the Commission's proposal (*see* discussion in Section III.A.8 on referencing an early site permit) not to impose an updating requirement for early site permit information other than that related to emergency preparedness. Accordingly, the Commission concludes that the early site permit holder should be subject to Part 21 once it references the permit in a license application.

The Commission believes that changes to Part 21 are unnecessary to reflect these determinations with respect to early site permit applicants and holders. A licensee's reporting requirements in Part 21 apply only with respect to "basic components" used or to be used in an NRC-licensed or otherwise regulated facility. The safety-related analyses and consulting services supplied to an applicant for an early site permit appear~~s~~ to fall within the definition of "basic component," in that they constitute "safety-related design [and] analyses . . . associated with component hardware" (*See* 10 CFR § 21.3, "Basic component," paragraph (3)). Thus, Part 21 could be interpreted as applying to the early site permit holder immediately upon the

permit's issuance. However, there appears to be little reasonable likelihood of a "substantial safety hazard" unless and until the early site permit has been referenced by the permit holder in a license application. Once the early site permit has been referenced, the potential for a substantial safety hazard clearly exists if a known defect in site parameters, terms, or conditions defining the envelope for safe plant operation is not disclosed, and a plant is designed, constructed, and allowed to operate which does not reflect the actual limiting parameters and conditions of the site. ~~Accordingly, the Commission concludes that it is reasonable and appropriate to limit the applicability of Part 21 to the early site permit holder after the holder references the early site permit in a license application.~~ Thus, no changes to Part 21 are necessary to reflect the Commission's intent.

The Commission also proposes that Part 21 apply to suppliers of safety-related analyses and services to an early site permit holder in the same manner and extent as Part 21 applies to the early site permit holder. Such suppliers would be subject to Part 21 only after the early site permit holder references the permit in a license application.

Design certification rules.

Similar to the approach for early site permit applicants and holders, the Commission proposes that the requirements in Part 21 should not apply to the applicant/vendor for a design certification (and/or its successors) during the pendency of its design certification application. During the pendency of the design certification application, the applicant/vendor would be required by 10 CFR 50.9, "Completeness and accuracy of information," to notify the Commission of any information having a "significant implication for public health and safety or the common defense and security" with respect to the matters covered in the application, pursuant to proposed § 52.111. Failure to abide by the completeness and accuracy requirements in § 50.9 would subject the applicant/vendor to potential criminal liability under § 52.113 (proposed § 52.403). In addition, under current § 52.9, the applicant for a design certification is subject to penalties for deliberate misconduct, including submission to the NRC of information known to be

in finding that the applicable requirements of 10 CFR Part 50 have been met, and ~~in developing~~ in reviewing the licensee's proposed inspections, tests, and analyses that the licensee must 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 the Atomic Energy Act, and the Commission's rules and regulations.

For these reasons, the Commission believes it is prudent to proceed with this proposed rulemaking. The addition of these requirements for applicants for construction permits, combined licenses, and duplicate design licenses is necessary to ensure the NRC staff can meet its regulatory obligations. In addition, giving future applicants notification up front that the staff requires this information in the application will relieve them of a larger burden of having to compile the information during the application review process when the Commission requests the information to complete its review. The need to compile the information during the review process could impact the review schedule and result in other unnecessary burdens on the applicant.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the ADDRESSES heading.

XII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing of nuclear power plants. The companies that will apply for an approval, certification, permit, site report, or license in accordance with the regulations affected by this proposed rule do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XIII. Backfit Analysis

The NRC has determined that the backfit rule does not apply to this proposed rule; therefore, a backfit analysis is not required for this proposed rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109. The proposed rule would revise the requirements for early site permits, standard design certifications, and combined licenses for nuclear power plants, so it would affect a potential applicant who might, in the future, apply for an early site permit, design certification, or combined license. However, the backfit rule does not apply because the proposed rule would not impose any modifications on a current holder ~~or~~ of an early site permit, certified design, or combined license.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and record keeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 21

Nuclear power plants and reactors, Penalties, Radiation protection, Reporting and record keeping requirements.

10 CFR Part 50

other module co-located on the same site, even though the nuclear power station may have some shared or common systems.

Prototype plant means a nuclear reactor that is used to test design features, such as the testing required by § 52.107(b(2). The prototype plant is similar to the first-of-a-kind or standard plant design in all features and size, but may include additional safety features to protect the public, the plant staff, and the plant itself from the possible consequences of accidents during the testing period.

Standard design means a design which is sufficiently detailed and complete to support certification in accordance with Subpart B of this part, and which is usable for a multiple number of units or at a multiple number of sites without reopening or repeating the review.

Standard design certification, *design certification*, or *certification* means a Commission approval, issued pursuant to Subpart B of this part, of a standard design for a nuclear power facility. A design so approved may be referred to as a *certified standard design*.

(b) All other terms in this part have the meaning set out in 10 CFR 50.2, or Section 11 of the Atomic Energy Act, as applicable.

§ 52.5 Applicability of 10 CFR Part 50 provisions.

Unless otherwise specifically provided for in this part, §§ 50.3, 50.4, 50.5, 50.7, 50.9, 50.10, 50.11, 50.12, 50.13, 50.50, 50.51, 50.52, 50.53, 50.54, 50.55, 50.55a, 50.56, 50.57, 50.58, 50.59, 50.70, 50.71, 50.72, 50.73, 50.74, 50.75, 50.78, 50.80, 50.81, 50.82, 50.90, 50.91, 50.92, 50.100, 50.101, 50.102, 50.103 and 50.109 of this chapter apply to a licensee, holder of, or applicant for an approval, certification, permit, site report, or license issued under this part. A licensee, holder of, or applicant for an approval, certification, permit, site report, or license

environmental effects of construction and operation of a reactor, or reactors, which have characteristics that fall within the postulated site parameters, and provided further that the report need not include an assessment of the benefits (for example, need for power) of the proposed action, but must include an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed.

(b) (1) The application must identify physical characteristics unique to the proposed site, such as egress limitations from the area surrounding the site, that could pose a significant impediment to the development of emergency plans.

(2) The application may also either:

(i) Propose major features of the emergency plans, such as the exact sizes of the emergency planning zones, that can be reviewed and approved by NRC in consultation with the Federal Emergency Management Agency (FEMA) ~~FEMA~~ in the absence of complete and integrated emergency plans; or

(ii) Propose complete and integrated emergency plans for review and approval by the NRC, in consultation with FEMA ~~the Federal Emergency Management Agency~~, in accord with the applicable provisions of 10 CFR 50.47.

(3) Under paragraphs (b)(1) and (b)(2)(i) of this section, the application must include a description of contacts and arrangements made with local, state, and Federal governmental agencies with emergency planning responsibilities.

(i) Under the option set forth in paragraph (b)(2)(ii) of this section, the applicant shall make good faith efforts to obtain from the same governmental agencies certifications that:

(A) The proposed emergency plans are practicable;

(B) These agencies are committed to participating in any further development of the plans, including any required field demonstrations; and

within the postulated site parameters, and provided further that the statements need not include an assessment of the benefits (for example, need for power) of the proposed action, but must include an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed. The Commission shall determine, after consultation with ~~the Federal Emergency Management Agency~~ FEMA, whether the information required of the applicant by § 52.17(b)(1) shows that there is no significant impediment to the development of emergency plans, whether any major features of emergency plans submitted by the applicant under § 52.17(b)(2)(i) are acceptable, and whether any emergency plans submitted by the applicant under § 52.17(b)(2)(ii) provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

§ 52.19 Applicability of NRC requirements.

(a) An applicant shall comply with all requirements in 10 CFR Chapter I applicable to applicants for construction permits and limited work authorizations under 10 CFR 50.10.

(b) A holder of an early site permit shall comply with all requirements in 10 CFR Chapter I applicable to holders of construction permits and limited work authorizations under 10 CFR 50.10.

§ 52.21 Hearings.

An early site permit is a partial construction permit and is therefore subject to all procedural requirements in 10 CFR Part 2 which are applicable to construction permits, including the requirements for docketing in 10 CFR 2.101(a)(1) - (4), and the requirements for issuance of a notice of hearing in 10 CFR 2.104(a), (b)(1)(iv) and (v), (b)(2) to the extent it runs parallel to § 2.104(b)(1)(iv) and (v), and (b)(3). However, the designated sections may not be construed to require that the environmental report or draft or final environmental impact statement include an assessment of the benefits of the proposed action. In the hearing, the presiding officer shall

(ITAAC)

(vi) Proposed tests, inspections, analyses, and acceptance criteria necessary and sufficient to provide reasonable assurance that, if the tests, inspections and analyses are performed and the acceptance criteria met, a plant that references the design is built and will operate in accordance with the design certification, the provisions of the Act, and the applicable Commission's rules and regulations.

(vii) The interface requirements to be met by those portions of the plant for which the application does not seek certification. These requirements must be sufficiently detailed to allow completion of the final safety analysis and design-specific probabilistic risk assessment required by paragraph (a)(1)(v) of this section;

(viii) Justification that compliance with the interface requirements of paragraph (a)(1)(vii) of this section is verifiable through inspection, testing (either in the plant or elsewhere), or analysis. The method to be used for verification of interface requirements must be included as part of the proposed tests, inspections, analyses, and acceptance criteria required by paragraph (a)(1)(vi) of this section; and

(ix) A representative conceptual design for those portions of the plant for which the application does not seek certification, to aid the NRC staff in its review of the final safety analysis and probabilistic risk assessment required by paragraph (a)(1)(v) of this section, and to permit assessment of the adequacy of the interface requirements in paragraph (a)(1)(vii) of this section.

(2) The application must contain a level of design information sufficient to enable the Commission to judge the applicant's proposed means of assuring that construction conforms to the design and to reach a final conclusion on all safety questions associated with the design before the certification is granted. The information submitted for a design certification must include performance requirements and design information sufficiently detailed to permit the

§ 52.213 Standards for review of applications.

Applications filed under this subpart will be reviewed according to the standards set out in 10 CFR Parts 20, 50, 51, 55, 73, and 100 as they apply to applications for construction permits and operating licenses for nuclear power plants, and as those standards are technically relevant to the design proposed for the facility.

§ 52.215 Applicability of NRC requirements.

(a) An applicant shall comply with all requirements in 10 CFR Chapter I applicable to applicants for construction permits and limited work authorizations under 10 CFR 50.10.

(b) After a combined license is issued but before the Commission has authorized operation under § 52.231, the licensee shall comply with all requirements in ~~title 10 of this chapter~~ this chapter of title 10 applicable to holders of construction permits for nuclear power reactors.

(c) After the Commission has authorized operation under § 52.231, the licensee shall comply with all requirements in 10 CFR Chapter I applicable to holders of operating licenses for nuclear power reactors. Any limitations contained in 10 CFR Part 50 regarding applicability of the provisions to certain classes of facilities continue to apply. Provisions of 10 CFR Part 50 that do not apply to holders of combined licenses issued under this subpart include §§ 50.55(a), (b) and (d), and 50.58(a).

§ 52.217 Administrative review of applications.

A proceeding on a combined license is subject to all applicable procedural requirements contained in 10 CFR Part 2, including the requirements for docketing (§ 2.101) and issuance of a notice of hearing (§ 2.104). If an applicant requests a Commission finding on certain ITAAC with the issuance of the combined license, then those ITAAC will be identified in the notice of

of 10 CFR Part 50 relating to the facility licensing process are, in general, predicated on the assumption that the facility will be assembled and constructed on the site at which it is to be operated. In those circumstances, both facility design and site-related issues can be considered in the initial, construction permit stage of the licensing process.

(b) Under the Atomic Energy Act, a license may be sought and issued authorizing the manufacture of facilities but not their construction and installation at the sites on which the facilities are to be operated. Prior to the "commencement ~~and~~ of construction," as defined in § 50.10(c) of this chapter, of a facility (manufactured under such a Commission license) on the site at which it is to operate—that is preparation of the site and installation of the facility—a construction permit, combined license, or duplicate plant license that, among other things, reflects approval of the site on which the facility is to be operated, must be issued by the Commission. This subpart sets out the particular requirements and provisions applicable to situations where nuclear power reactors to be manufactured under a Commission license and subsequently installed at the site under a Commission construction permit, combined license, or duplicate plant license, are of the type described in § 50.22 of this chapter.

<u>§ 52.243 Relationship to other subparts</u>.

(a) *Referencing a manufacturing license.* An application for a construction permit, operating license or combined license to construct a nuclear power plant which is to be manufactured under a manufacturing license issued under this subpart need not contain the information or analyses that have been previously approved by the Commission in connection with the issuance of the manufacturing license. The application must reference the manufacturing license, and provide sufficient information to demonstrate that the site on which the reactor(s) is to be located and operated fits within the postulated site parameters specified in the manufacturing license.

§ 52.249 Applicability of NRC requirements

An applicant shall comply with all requirements in ~~title 10 of~~ this chapter of title 10 applicable to applicants for construction permits and operating licenses under ~~title 10 of~~ this chapter of title 10, except §§ 50.10(b) and (c), 50.12(b), 50.23, 50.30(d), 50.34(a)(10), 50.34a(c), 50.35(a) and (c), 50.40(a), 50.45, 50.55(d), 50.56 of this chapter and Appendix J of 10 CFR Part 50 do not apply to manufacturing licenses. Appendices E and H of 10 CFR Part 50 apply to manufacturing licenses only to the extent that the requirements of these appendices involve facility design features.

§ 52.251 Referral to the ACRS.

The Commission shall refer a copy of the application to the Advisory Committee on Reactor Safeguards (ACRS). The ACRS shall report on those portions of the application which concern safety.

§ 52.253 Issuance of manufacturing license.

(a) The Commission may issue a license to manufacture one or more nuclear power reactors to be operated at sites not identified in the license application if the Commission finds that:

(1) The applicant has described the proposed design of and the site parameters postulated for the reactor(s), including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features of components incorporated therein for the protection of the health and safety of the public.

(2) Further technical or design information that may be required to complete the design report and which can reasonably be left for later consideration, will be supplied in a supplement to the design report.

(3) Safety features or components, if any, that require research and development ~~has~~ have been described by the applicant and the applicant has identified, and there will be conducted a research and development program reasonably designed to resolve any safety questions associated with the features of components; and

(4) On the basis of the foregoing, there is reasonable assurance that:

(i) Such safety questions will be satisfactorily resolved before any of the proposed nuclear power reactor(s) are removed from the manufacturing site; and

(ii) Taking into consideration the site criteria contained in Part 100 of this chapter, the proposed reactor(s) can be constructed and operated at sites having characteristics that fall within the site parameters postulated for the design of the reactor(s) without undue risk to the health and safety of the public.

(5) The applicant is technically and financially qualified to design and manufacture the proposed nuclear power reactor(s).

(6) The issuance of a license to the applicant will not be inimical to the common defense and security or to the health and safety of the public.

(7) On the basis of the evaluations and analyses of the environmental effects of the proposed action required by Subpart A of Part 51 of this chapter and § 52.247, the action called for is the issuance of the license.

(b) When an applicant has supplied initially all of the technical information required to complete the application, including the final design of the reactor(s), the findings required for the issuance of the license will be appropriately modified to reflect that fact.

(c) Each manufacturing license issued under this subpart will specify the number of nuclear power reactors authorized to be manufactured and the latest date of the completion of

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MERRIFIELD

SUBJECT: **SECY-02-0077 - PROPOSED RULE TO UPDATE 10 CFR PART 52, "EARLY SITE PERMITS, STANDARD DESIGN CERTIFICATIONS, AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS"**

Approved ✓ Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: See attached comments.

SIGNATURE

12/12/02
DATE

Entered on "STARS" Yes ✓ No ____

Commissioner Merrifield's Comments on SECY-02-0077

I appreciate the staff's considerable efforts on the proposed revision to 10 C.F.R. Part 52 and other related sections in 10 C.F.R. and I approve the staff's request to publish in the *Federal Register* the proposed rulemaking. However, the staff should make the following changes prior to publishing the documents in the *Federal Register*:

1. I agree with Commissioners Dicus and Diaz that the term of a combined license needs further consideration. I do not approve the staff's recommendations for changing Sections 52.83 and 52.97 in the proposed rule. The Commission has repeatedly sought legislation to clarify the initiating event for beginning a Part 52 COL term. Although, this clarification has not been made, this session of Congress had included a clarification in both the House and Senate Energy Bills. Certainly, NRC regulations should not be changed before the Commission knows definitively that Congress will not provide this clarification prior to the issuance of the first Part 52 COL.

   Even without clarification from Congress the regulations should not be changed. If the regulations are changed, as the staff suggests, the operating term for a COL will be reduced by the number of years spent in construction, while at the same time our regulations will continue to exclude the period of construction for Part 50 operating license terms. This regulatory scheme makes no sense in the context of Section 103(c), which clearly states that a license term depends "on the type of activity to be licensed." Section 103(c) can not be reasonably interpreted to require such different terms for the same activity - reactor operation. When the Commission promulgated Part 52 it concluded, albeit implicitly, that the "activity" of operation for a COL holder may extend for 40 years. It crafted the regulations to provide that the operating term extends 40 years after the Commission makes its' finding that the acceptance criteria are met, which takes place after the construction period. It is well understood that the purpose of Congress enacting AEA §185b was to clarify the Commission's authority to promulgate Part 52, which was the subject of significant controversy. There can be no question that Congress was well aware of the provisions of Part 52, including the 40-year term of operation. Thus, Congress had the opportunity to limit the Commission's authority to allow for a 40-year operating term, but it did not.

   Now, after all of the controversy over Part 52 in the first place, including years of litigation, Congressional endorsement of it, and 10 intervening years following its endorsement, the staff on its own raises the issue of reducing the operating term. After all of this public interaction, I am unwilling to change the Commission's long standing interpretation of Section 103(c), without a judicial or Congressional mandate to do so.

2. I agree with Commissioner Diaz's comment that a "minimal increase" threshold rather than a "substantial increase" threshold in severe accident-related information should be retained in paragraph (B)(5)(c) of Section VIII of the design certification rule (Appendices A, B and C). The staff should maintain the "substantial increase" threshold for severe-accident-related information rather than apply the "more than minimal increase" threshold of 10 C.F.R. 50.59. The application of the "more than minimal increase" threshold of Section 50.59 which applies to design basis accidents, not severe accidents, would impose additional burden on licensees and the staff because it would require prior NRC review and approval. This increased burden is not necessary to

maintain adequate protection of public health and safety. The increase in risk would be insignificant for these very low probability events.

3. I agree with Commissioners Dicus and Diaz regarding the industry petitions for rulemaking. These petitions should be consolidated into this rulemaking effort, if approved, and published in the Federal Register as one final proposed rulemaking.

12/12/02