



NUCLEAR ENERGY INSTITUTE

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May 14, 2003

Mr. James E. Lyons  
Director, New Reactor Licensing Project Office  
Office of Nuclear Reactor Regulation  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

**SUBJECT: Resolution of Generic Topic ESP-19 (effects of potential new units at an existing site)**

**PROJECT 689**

Dear Mr. Lyons:

In the public meeting with the NRC staff on March 5, 2003, we discussed generic topic ESP-19, which concerns the interface issues that will exist and need to be addressed if the ESP candidate site has operating nuclear units on it.

In accordance with the protocol established for documenting resolution of generic ESP issues, we request that, by reply to this letter, the NRC confirm the understandings and expectations that resulted from our discussions as identified below. To promote timely resolution of generic issues and continued progress toward submittal of ESP applications in mid-2003, we request that NRC respond by June 27.

**ESP-19 Understandings and Expectations:**

1. The operating unit licensee is responsible for and has authority over the "owner-controlled-area."
2. The ESP holder is responsible for compliance with 10 CFR 52.35 (Use of the site for other purposes).



Mr. James E. Lyons

May 14, 2003

Page 2

3. If the ESP holder and the operating unit licensee are different entities, appropriate managerial and administrative controls may need to be established to ensure compliance with 10CFR52.35.
4. The requirements of 10 CFR 50.34(a)(11) are not applicable to an ESP application, as discussed below.
  - 10 CFR 50.34(a)(11) states "On or after February 5, 1979, applicants who apply for construction permits for nuclear power plants to be built on multiunit sites shall identify potential hazards to the structures, systems and components important to safety of operating nuclear facilities from construction activities..." The provisions of 10 CFR 50.34(a)(11) are not invoked by 10 CFR 52.17(a)(1); therefore the requirements of 10 CFR 50.34(a)(11) are not applicable to the ESP application. The requirements of 10 CFR 50.34(a)(11) are applicable to a combined license (COL) application.
  - 10 CFR 50.34(a)(11) was established to assure the integrity of structures, systems and components important to the safety of the operating unit or units during construction activities. Although an ESP is a partial construction permit for the purpose of various regulations (e.g. 10 CFR 52.21 and 52.37), an "ESP" does not authorize "construction activities."
  - An ESP applicant who wishes to perform, after grant of the early site permit, certain activities allowed by 10 CFR 50.10(e)(1) without obtaining the separate authorization required by that section shall include a site redress plan in its application in accordance with 10 CFR 52.17(c). 10 CFR 50.10(e)(1) specifically outlines which activities may be authorized to be performed. 10 CFR 50.10(b) states that such activities are not included in the term "construction." The Early Site Permit final rulemaking (4/18/89; 54 FR 15379) identified the activities allowed by 10 CFR 50.10(e)(1) as "site preparation activities." Therefore, although 10 CFR 50.34(a)(11) does not define the term "construction activities," it would be incorrect to conclude that the term includes the site preparation activities outlined in 10 CFR 50.10(e)(1).
  - 10 CFR 52.18 states "Applications filed under this subpart will be reviewed according to the applicable standards set out in 10 CFR part 50 and its appendices and part 100 as they apply to applications for construction permits for nuclear power plants." This regulation establishes the location of applicable review standards for an ESP (as they apply to applications for construction permits); it does not

Mr. James E. Lyons

May 14, 2003

Page 3

establish cascading requirements to additional regulations not specifically identified in Part 52 as applicable to ESPs. Neither 10 CFR 50.10(e)(1), 10 CFR 52.17(c), nor 10 CFR 52.18 specify 10 CFR 50.34(a)(11) to be an applicable requirement or standard for ESP applications.

- o The licensee for an operating unit has the authority to determine all activities in the exclusion area (10 CFR 100.3). The licensee for an operating nuclear unit is required by its license and regulations to evaluate potential hazards to its structures, systems and components important to safety, associated with activities in the owner-controlled area. In this regard, 10 CFR 50.59 is the applicable regulation for the operating unit. Activities authorized in an ESP pursuant to 10 CFR 52.17(c) and activities authorized separately pursuant to 10 CFR 50.10(e) to be conducted on multiunit sites would be evaluated by the operating unit licensee prior to the operating unit licensee authorizing their commencement. An ESP holder would be required by the operating unit licensee to identify potential hazards, and any managerial and administrative controls to be used to assure the safety of the operating unit. Impacts from proposed activities would also be evaluated by the operating unit licensee against its programs (e.g., emergency, security, environmental protection, and decommissioning plans) in accordance with the regulations applicable to the operating unit. The NRC would have oversight opportunity consistent with its oversight of the operating unit's activities. Therefore, the health and safety of the public is assured by regulations and is not dependent on the applicability of 10 CFR 50.34(a)(11) to ESPs.
  - o As a practical matter, the precise nature of any potential hazards associated with activities authorized pursuant to 10 CFR 52.17(c) and the protective actions to prevent or acceptably mitigate the hazards are not likely to be known at the time an ESP application is submitted (e.g. specifics on large equipment to be used) and thus are more appropriately addressed when site preparation activities are being planned. Notwithstanding the other reasons for the inapplicability of 10 CFR 50.34(a)(11) to an ESP application, the first sentence of 10 CFR 50.34(a)(11) would not be implementable at the time an ESP application is submitted.
5. Potential impacts of an operating nuclear unit(s) on the proposed site will be identified by an ESP applicant in sections of the application as appropriate.

Mr. James E. Lyons

May 14, 2003

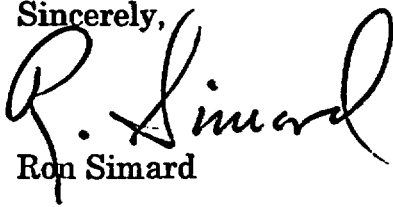
Page 4

- Draft Review Standard RS-002 Sections 2.2.1-2.2.2 provide guidance concerning identification of hazards in the site vicinity. Potential hazards associated with an existing nuclear plant would be identified as would potential hazards associated with any other industrial facility in the vicinity. Since the potential hazards associated with an operating unit are already well documented and docketed, this information may be incorporated by reference to the operating unit docket.
- Draft Review Standard RS-002 Attachment 2 provides guidance concerning construction worker dose in the Environmental Report.

The enclosure provides for your use an updated list and status of generic ESP topics that have been identified for discussion during the pre-application period.

We look forward to your feedback on ESP-19. If you have any questions concerning this request, please contact Russ Bell ([rjb@nei.org](mailto:rjb@nei.org) or 202-739-8087).

Sincerely,



Ron Simard

Enclosures

cc: Ronaldo V. Jenkins, NRC/NRR  
NRC Document Control Desk

Enclosure  
Status of Generic ESP Interactions/Topics – May 14, 2003

ESP Topic	NEI Resolution Letter	NRC Response	Status/Remarks (Concerns highlighted)
1. ESP application form & content and ESP review guidance	*Later		<ul style="list-style-type: none"> <li>• Industry comments on ESP Review Standard (RS-002) provided 3/31</li> <li>• More time to be provided for late sections on QA, Security, and Dose Consequence Analyses (comments due June 13)</li> <li>• * ESP-1 resolution letter to follow RS-002 review/comment/revision process</li> </ul>
2. ESP inspection guidance	Post- IMC- 2501		<ul style="list-style-type: none"> <li>• IMC-2501 to be conformed to resolution of ESP-3 (QA)</li> <li>• IMC-2501 and ESP inspection procedures to be completed to support June submittals</li> </ul>
2a. Pre-application interactions (voluntary nature, plans for local public mtgs & review fee structure)	11/26	1/10	Resolved
3. QA requirements for ESP information	12/20	2/3	<ul style="list-style-type: none"> <li>• Continuing concern about NRC expectations for Appendix B equivalent controls</li> <li>• Comments due 6/13 on RS-002 Section 17.1.1</li> </ul>
4. Nominal NRC review timeline	5/1	n/a	<ul style="list-style-type: none"> <li>• Industry will continue to seek ways to reduce overall time to ESP</li> </ul>
5. Mechanism for documenting resolution of ESP issues	9/10	11/5	<ul style="list-style-type: none"> <li>• Resolved</li> <li>• NRC provided supplemental response on 4/17</li> </ul>
6. Use of plant parameters envelope (PPE) approach	12/20	2/5	Resolved
7. Guidance for satisfying §52.17(a)(1) requirements	a. 12/20	2/5	<ul style="list-style-type: none"> <li>• Supplemental resolution letter addresses continuing concern about nature of dose analyses to be provided by pilot applicants</li> <li>• NRC revised Section 15 of RS-002 based on March 5 discussions; comments due 6/13</li> </ul>
	b. 4/10		<ul style="list-style-type: none"> <li>• NEI to continue to pursue more optimal resolution (i.e., sole focus for ESP on Chi/Q) via RS-002 and other means</li> </ul>
8. Fuel cycle and transportation impacts (Tables S-3 & S-4)	5/7	n/a	<ul style="list-style-type: none"> <li>• Industry approach described in May 7 letter to be reviewed as part of pilot ESP applications</li> </ul>
9. Criteria for assuring control of the site by the ESP holder	5/2		Resolution Pending
10. Use of License Renewal GEIS for ESP	2/6	4/1	Evaluating NRC response
11. Criteria for determining ESP duration (10-20 years)	12/20	2/5	Resolved

ESP Topic	NEI Resolution Letter	NRC Response	Status/Remarks (Concerns highlighted)
12. NEPA consideration of severe accident issues (SAMAs and impacts)	a. 12/20	2/12	<ul style="list-style-type: none"> <li>• Follow-up letter planned based on March 26 discussion w/NRC to clarify treatment in ESPAs of severe accident impacts</li> </ul>
	b. 4/28	n/a	
13. Guidance for ESP seismic evaluations	4/25		Resolution pending
14. Applicability of Federal requirements concerning environmental justice	*None		<ul style="list-style-type: none"> <li>• Commission action pending in response to Dec. 20 NEI letter</li> <li>• No ESP-specific discussion of EJ or ESP-14 resolution letter necessary*</li> </ul>
15. Appropriate level of detail for site redress plans	11/26	1/16	Resolved
16. Guidance for ESP approval of emergency plans	4/7		Resolution pending
17. Petition to eliminate duplicative NRC review of valid existing site/facility information	*None		<ul style="list-style-type: none"> <li>• Commission action pending on petition PRM-52-1</li> <li>• No ESP-specific discussion or ESP-17 resolution letter necessary*</li> </ul>
18. Petition to eliminate reviews for alternate sites, sources and need for power	*None		<ul style="list-style-type: none"> <li>• Supplemental industry comments on PRM-52-2 provided on Dec. 18</li> <li>• Commission action pending</li> <li>• No ESP-specific discussion or ESP-18 resolution letter necessary*</li> </ul>
18a Alternative site reviews	12/20	3/7	<ul style="list-style-type: none"> <li>• March 31 industry comments on RS-002 identified disagreement with the NRC staff view in its 3/7 letter on ESP-18A regarding the nature of the NRC review and required determination re* alternative sites</li> </ul>
18x Need for alternative energy source evaluation and review	*None		<ul style="list-style-type: none"> <li>• * NEI commented on RS-002 (3/31) that that ESPAs need not address alt. sources</li> </ul>
19. Addressing effects of potential new units at an existing site	5/14		Resolution pending
20. Practical use of existing site/facility information	11/26	12/18	Resolved
21. Understanding the interface of ESP with the COL process.	COLTF Item*		<ul style="list-style-type: none"> <li>• Purpose is clarity of expectations regarding reference to an ESP by a COL applicant</li> <li>• Analogous to "COL Items" identified as part of the design certifications</li> <li>• Issue to be transferred to COLTF *</li> </ul>
22. Form and content of an ESP	4/30		<ul style="list-style-type: none"> <li>• NEI draft included as enclosure with 12/20 ESP-6 letter</li> <li>• Updated version attached to ESP-22 letter; NRC response to provide comments</li> </ul>