NUCLEAR ENERGY INSTITUTE

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May 2, 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-9 (Criteria for assuring control of the site by the ESP holder)

PROJECT 689

Dear Mr. Lyons:

In the public meeting with the NRC staff on March 5, 2003, we discussed generic topic ESP-9, which concerns criteria for assuring control of the site by the Early Site Permit (ESP) holder.

As discussed with the NRC staff, an ESP does not grant approval to conduct work activities, except in accordance with 10 CFR 52.17(c). Therefore, the degree of control over the site that an ESP applicant must demonstrate is considerably less than the control that must be demonstrated by a COL applicant.

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 13.

ESP-9 Understandings and Expectations:

- An ESP can have joint holders.

- If one or both of the ESP holders owns the property that is the subject of the ESP, unless otherwise specified in the ESP application, it is assumed

that the ESP holder has sufficient legal rights and authority over the property to carry out the objectives of the ESP, and that it has the authority to satisfy the requirements of 10 CFR 52.35 (Use Of The Site For Other Purposes).

- If the ESP holder (or neither ESP holder in the case of joint permit holders) does not own the property that is the subject of the ESP, the ESP applicant must attest in the application to the fact that the ESP holder has been granted, or will be granted at the appropriate time, sufficient legal rights and authority over the property to carry out the objectives of the ESP. Further, the ESP holder will establish the appropriate relationship with the property owner to satisfy the requirements of 10 CFR 52.35.

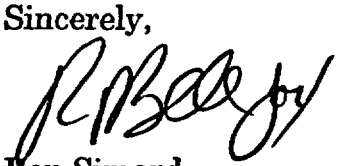
- For the purposes of this ESP-9 generic issue, sufficient legal rights and authority means that the ESP holder(s), among other things:

    - can make emergency planning agreements pursuant to 10 CFR 52.17(b)(3);
    - will be responsible for the conduct of ESP-authorized pre-COL construction activities pursuant to 10 CFR 50.10(e)(1) and 10 CFR 52.17(c); and
    - will be responsible for the implementation of a redress plan, as applicable.

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. If you have any questions concerning this request, please contact Russ Bell (rjb@nei.org or 202-739-8087).

Sincerely,



Ron Simard

Enclosure

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

Enclosure

Status of Generic ESP Interactions/Topics – May 2, 2003

ESP Topic	NEI Resolution Letter	NRC Response	Status/Remarks (Concerns highlighted)
1. ESP application form & content and ESP review guidance	*Later		• Industry comments on ESP Review Standard (RS-002) provided 3/31 • More time to be provided for late sections on QA, Security, and Dose Consequence Analyses (available in April) • * ESP-1 resolution letter to follow RS-002 review/comment/revision process
2. ESP inspection guidance	Post-IMC-2501		• IMC-2501 to be conformed to resolution of ESP-3 (QA) • IMC-2501 and ESP inspection procedures to be completed to support June submittals
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	• Follow-up questions discussed on Mar. 5 • Continuing concern about NRC expectations for Appendix B-equivalent controls • Comments due 6/13 on RS-002 Section 17.1.1
4. Nominal NRC review timeline	5/1		• NRC discussed ESP review timeline on 1/29 • Industry may propose ways to reduce overall time to ESP
5. Mechanism for documenting resolution of ESP issues	9/10	11/5	• Resolved • NRC provided supplemental response on 4/17
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	• Supplemental resolution letter addresses continuing concern about nature of dose analyses to be provided by pilot applicants
	b. 4/10		• NRC revised Section 15 of RS-002 based on March 5 discussions; comments due 6/13 • NEI to continue to pursue more optimal resolution (i.e., sole focus for ESP on Chi/Q) via RS-002 and other means
8. Fuel cycle and transportation impacts (Tables S-3 & S-4)	Target May		• Industry preparing resolution letter based on March 26 discussion w/NRC
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
12. NEPA consideration of severe	a. 12/20	2/12	• Follow-up letter planned based on March 26

ESP Topic	NEI Resolution Letter	NRC Response	Status/Remarks (Concerns highlighted)
accident issues (SAMAs and impacts)	b. 4/28	n/a	discussion w/NRC to clarify treatment in ESPAs of severe accident impacts
13. Guidance for ESP seismic evaluations	4/25		Resolution pending
14. Applicability of Federal requirements concerning environmental justice	*None		• Commission action pending in response to Dec. 20 NEI letter • No ESP-specific discussion of EJ or ESP-14 resolution letter necessary*
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		• Commission action pending on petition PRM-52-1 • No ESP-specific discussion or ESP-17 resolution letter necessary*
18. Petition to eliminate reviews for alternate sites, sources and need for power	*None		• Supplemental industry comments on PRM-52-2 provided on Dec. 18 • Staff recommendation and Commission action pending • No ESP-specific discussion or ESP-18 resolution letter necessary*
18a Alternative site reviews	12/20	3/7	• 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
18x Need for alternative energy source evaluation and review	*None		• * NEI commented on RS-002 (3/31) that that ESPAs need not address alt. sources
19. Addressing effects of potential new units at an existing site	Target 5/2		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*		• Purpose is clarity of expectations regarding reference to an ESP by a COL applicant • Analogous to "COL Items" identified as part of the design certifications • Issue to be transferred to COLTF *
22. Form and content of an ESP	4/30		• NEI draft included as enclosure with 12/20 ESP-6 letter • Updated version to be provided via ESP-22 letter; NRC response to provide comments