POLICY ISSUE
(Information)

January 7, 2005 SECY-05-0006

FOR: The Commissioners

FROM: Luis A. Reyes
Executive Director for Operation /RA/

SUBJECT: SECOND STATUS PAPER ON THE STAFF'S PROPOSED REGULATORY STRUCTURE FOR NEW PLANT LICENSING AND UPDATE ON POLICY ISSUES RELATED TO NEW PLANT LICENSING

PURPOSE:

To update the Commission on (1) the staff's effort regarding a regulatory structure for new plant licensing, (2) incorporation of the four previously approved policy issues in SECY-03-0047 ("Policy Issues Related to Licensing Non-Light-Water Reactor Designs," dated March 28, 2003 (ML030160002), into the proposed regulatory structure for new plant licensing, (3) the staff proposed positions on the two policy issues pertaining to integrated risk of modular reactors and containment versus confinement, and (4) new policy issues for Commission information.

SUMMARY:

This paper discusses the working draft of the "Regulatory Structure for New Plant Licensing, Part 1: Technology-Neutral Framework." This is a work in progress and does not represent a staff position. There are difficult technical and policy issues that the staff is addressing with the development and implementation of this new licensing structure. The staff is releasing this working draft to the public to start engaging stakeholder input early in the process as discussed in previous SECY papers. This paper also discusses (1) how the staff proposes to incorporate the four issues approved by the Commission (i.e., definition of defense-

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in-depth, the use of a probabilistic approach to establish the licensing basis, the use of scenario-specific source terms for licensing decisions, and considerations associated with modification of emergency preparedness requirements) into the proposed regulatory structure for new plant licensing, (2) the staff's proposed positions on the two policy issues concerning integrated risk and containment versus confinement, and (3) an update on new policy issues (i.e., level of safety) resulting from work performed to date on the technology-neutral framework for new plant licensing. The draft framework and the work to date on policy issue resolutions discussed in this paper are intended as a first step in formulating the technical basis for future rulemaking for technology-neutral regulations for new plant licensing.

BACKGROUND:

In SECY-03-0047, "Policy Issues Related to Licensing Non-Light-Water Reactor Designs," dated March 28, 2003 (ML030160002), the staff discussed options and provided recommendations for Commission consideration on seven policy issues fundamental to licensing non-light-water reactor (non-LWR) designs. The staff stated in that paper that the resolution of these issues would be included in the development of the framework for new plant licensing.

The June 26, 2003, staff requirements memorandum (SRM) in response to SECY-03-0047, provided direction on the seven policy issues. The Commission approved the staff's recommendations on four of the issues (i.e., definition on defense-in-depth, the use of a probabilistic approach to establish the licensing basis, the use of scenario-specific source terms for licensing decisions, and the role of emergency preparedness in defense-in-depth), but disapproved the staff's recommendation on international codes and standards. On the remaining two issues, integrated risk and containment versus confinement, the Commission requested the staff (1) to provide further details on the options for, and associated impacts of, requiring that modular reactor designs account for the integrated risk posed by multiple reactors and (2) to develop functional containment performance standards and submit options and recommendations to the Commission.

In SECY-04-0103, "Status of Response to the June 26, 2003, Staff Requirements Memorandum on Policy Issues Related to Licensing Non-Light-Water Reactor Designs," dated June 23, 2004 (ML041140521), the staff provided a status report on the staff's work on integrated risk from modular reactors and containment performance standards. The staff also said it would complete the evaluations and provide options and recommendations to the Commission in December 2004 in coordination with the development of the technology-neutral framework for new plant licensing.

In SECY-04-0157, "Status of Staff's Proposed Regulatory Structure for New Plant Licensing and Potentially New Policy Issues," dated August 30, 2004 (ML042370388), the staff provided a status paper on the regulatory structure for new plant licensing including a summary of the technology-neutral framework. The staff said it would complete a preliminary draft of the framework in December 2004, and would issue the draft concurrently to the Commission and to the public for comment. The staff also alerted the Commission to three potentially new policy issues: level of safety, security, and selective implementation. The staff stated that it would provide preliminary recommendations on the new policy issues in December 2004, and final recommendations after a public review and comment period so that the staff would consider stakeholder input.

DISCUSSION:

Regulatory Structure

A working draft of the report, "Regulatory Structure for New Plant Licensing, Part 1: Technology-Neutral Framework," is attached for the Commission's information (Attachment 1). The objective of the regulatory structure for new plant licensing is to provide a technology-neutral approach to enhance the effectiveness and efficiency of new plant licensing in the longer term (beyond the advanced designs currently in the pre-application stage). The staff is developing a regulatory structure with four major parts (as discussed in SECY-04-0157):

1) a technology-neutral framework
2) a set of technology-neutral requirements
3) a technology-specific framework
4) technology-specific regulatory guides

This paper focuses on the status of Part 1 of the Regulatory Structure for New Plant Licensing: the Technology-Neutral Framework. The staff has not started working on the other three parts, and although the framework will be useful to the staff and applicants in their activities on new reactors, the other parts will be needed to achieve effectiveness and efficiency in conducting new plant licensing. The staff plans to start working on the other three parts in January 2005.

To date, the staff has done enough work to demonstrate the feasibility of developing a technology-neutral framework. There are, however, difficult technical and policy issues that are being addressed by the staff that need to be resolved before the framework can be implemented. The concept of a technology-neutral approach to plant licensing was also proposed by the Nuclear Energy Institute (NEI) in a May 7, 2002, letter from Ralph Beedle to Chairman Meserve. This letter included as an attachment an industry white paper, NEI-02-02, "A Risk-Informed, Performance-Based Regulatory Framework for Power Reactors." The staff has considered this industry white paper in developing the technology-neutral framework. The overall top-down approach used in the framework is consistent with that proposed in the industry white paper.

The feedback from public meetings and the Advisory Committee on Reactor Safeguards (ACRS) briefings has been positive. The feedback indicates a general agreement about the need for a framework and the conceptual bases of the framework. The ACRS stated in a letter dated 12-9-04 ("Interim Letter - Regulatory Structure for New Plant Licensing: Technology-Neutral Framework," ML043480038), "We consider the completion of this effort to be essential for the efficient and effective certification of non-LWR designs . . . . the staff has a strategic approach and is articulating and addressing difficult technical and policy issues . . . . We look forward to continued discussion of the staff's progress." The stakeholders have expressed desire to interact with the staff and start providing input on the framework. Therefore, the staff is issuing a working draft of the framework to engage stakeholder input early into the process. The staff anticipates additional public review and comment interactions as the framework is further developed and the technical and policy issues are resolved. A public workshop to discuss stakeholder input is scheduled for the March 2005 timeframe. The staff's approach is in line with the Commission's expectation (expressed in the Commission's Policy Statement on the Regulation of Advanced Nuclear Power Plants, 59 FR 35461, July 12, 1994) that *"more*

timely and effective regulation of advanced reactors [will] . . . . encourage . . . . the earliest possible interaction of applicants, vendors, other government agencies, and the NRC to provide for early identification of regulatory requirements for advanced reactors."

The framework is a hierarchal structure that combines deterministic and probabilistic criteria for developing technology-neutral requirements to ensure the protection of the public health and safety. The framework contains criteria for developing—

- safety philosophy
- protective strategies
- risk objectives
- treatment of uncertainties
- process for defining scope of requirements

For each of these items, the staff has developed preliminary "working" criteria, as described in the attached framework, that demonstrate the feasibility of a technology-neutral framework in sufficient detail to start soliciting stakeholder input.

Policy Issues

The staff has incorporated into the framework the Commission's directions in the June 26, 2003, SRM on the four approved policy issues described in SECY-03-0047. The staff has also incorporated the staff's proposed positions on the two outstanding policy issues of integrated risk and containment performance. Additional comments on these issues are being sought so that the stakeholders will see the proposed positions in the overall context of the framework. At this time, therefore, the staff is not requesting Commission approval of the staff's proposed positions. The staff will submit final recommendations on these issues in mid 2005 to support pre-application reviews of new reactor designs (see discussion below). In addition, since the framework represents a technology-neutral approach, the staff has broadened the work on the policy issues to include future LWRs as well as non-LWRs. Accordingly, in the future these issues will not be referred to as non-LWR issues. In developing the framework, the staff has identified new potential policy issues (as discussed in SECY-04-0157), that the Commission may need to decide in the future.

The various issues have all been addressed in the framework which is being released for public review and comment to start soliciting stakeholder input. How they are being incorporated in

the framework is summarized below and discussed in more detail in Attachments 2 and 3. These issues are as follows:

1. Integrated risk
2. Containment functional performance requirements and criteria
3. Level of safety
4. Definition of defense-in-depth
5. Use of a probabilistic approach to establish the licensing basis
6. Use of scenario-specific source terms for licensing decisions
7. Possible modifications of emergency preparedness requirements
8. Physical protection
9. Selective implementation

Due to recent announcements regarding proposed applications on new reactors, resolution of Issues 1, 2 and 3 is needed to support the pre-application reviews. Therefore, the resolution of these issues are on a faster track than the schedule for the framework. The staff will provide recommendations on these three issues for Commission approval in June 2005. These issues are discussed in Attachment 2, and the issues being addressed via the framework are discussed in Attachment 3.

Issue 1: Integrated Risk

The Commission asked the staff to provide further details on the options for, and associated impacts of, requiring that modular reactor designs account for the integrated risk posed by multiple reactors.

In performing risk assessments, the staff's practice has been to consider the risk to the public on a per reactor basis, regardless of the number or the megawatt thermal size of the reactors on a site. This was the case in the Individual Plant Examination program and is still the case in current risk-informed activities. As of today, the maximum number of licensed reactors located on a single site is three, although there are sites where construction permits were granted for up to four reactors. Since many existing plants achieve a level of safety consistent with the Commission's Safety Goals, the integrated (i.e., cumulative) risk to the population around the site from multiple reactors remains small. However, as the number of reactors on a site increases (as may be the case for small modular reactor designs, where up to eight smaller units together may equal the output of one large unit), the staff must consider whether this practice is appropriate or whether small modular reactors should be treated differently.

Attachment 2 summarizes the staff's assessment of the integrated risk for modular plants (i.e., the cumulative effect on risk to the population around a site of adding many small reactors to the site to produce power equivalent to the power of a large unit). Metrics for both accident prevention and mitigation have been considered in this assessment for developing options and estimating the associated impacts.

The issue of integrated risk with respect to modular reactor designs was discussed with the ACRS on April 15, 2004. In an April 22, 2004, letter (ML041250415), the ACRS raised additional issues regarding the treatment of integrated risk. Specifically, the ACRS

recommended that the Commission's Quantitative Health Objectives apply to the site as a whole (not being limited to modular reactors).

In addition, an alternative view was presented on how to treat core damage frequency (CDF). Specifically, the ACRS stated that "a CDF goal should depend on the total number of reactors nationwide (not the number on a site)." This alternative view expands the scope of this issue from modular reactors to existing plants, the current early site permit applications, and future non-modular designs.

Since the original issue raised in SECY-03-0047 was restricted to modular reactors, the staff's work on this issue has also been restricted to modular reactors. As discussed in SECY-03-0047, the addition of a small number of additional large reactors to an existing site will have a small additional incremental risk, particularly considering that new plants are expected to have enhanced safety characteristics as compared to current plants. Accordingly, the staff does not consider the issue of integrated risk for non-modular reactors to be a near-term issue that requires immediate Commission direction. The staff plans, however, to solicit comments on this issue, and on the views expressed in the April 22, 2004, ACRS letter and to report the results in the next status paper.

For modular reactor designs, the staff has developed a proposed position (i.e., Option 3 discussed in Attachment 2) and has incorporated it into the framework. Specifically, the integrated risk from multiple reactor modules (where several small reactors are used to generate the electrical output of one large reactor) will be considered in risk-informed licensing decisions as follows:

- The integrated risk will assess accident prevention for modular reactor designs, independent of reactor power level.

- The integrated risk will account for the effect of reactor power level in assessing accident mitigation for modular reactor designs.

Issue 2: Containment Functional Performance Requirements and Criteria

The Commission asked the staff to develop containment functional performance requirements and criteria working closely with industry experts (e.g., designers, Electric Power Research Institute, etc.) and other stakeholders regarding options in this area, taking into account such features as core, fuel, and cooling systems design. The Commission also stated that the staff should pursue the development of functional performance standards and then submit options and recommendations to the Commission on this important policy decision.

The functional performance requirements and criteria for containment in protecting public health and safety vary significantly among new plant designs (e.g., high-temperature gas-cooled, liquid-metal, molten-salt, light-water reactor designs). The functions of the containment include the basic reactor-specific safety functions such as controlling heat generation, removing heat, preventing chemical attack, and containing fission products. Differences in containment functional performance requirements and criteria reflect differences in the integrated approach that designers use to optimize plant designs to meet risk objectives and safety requirements.

For some reactor technologies, designers do not view the fission product barrier function as an important safety function of the containment.

The staff has evaluated the functional performance requirements and criteria for containment on a technology-neutral basis, utilizing applicable Commission technical policies, NRC and industry documents, foreign and domestic technical information, and stakeholder input. Stakeholder input includes feedback and comments received at public meetings and in formal correspondence from industry experts and other stakeholders. The staff has concluded that the function of containment has a direct or supporting role in the following accident prevention and mitigation safety functions:

1. Protecting risk-significant SSCs from internal and external events
2. Physically supporting risk-significant SSCs
3. Protecting onsite workers from radiation
4. Removing heat to prevent risk-significant SSCs from exceeding design or safety limits
5. Providing physical protection (i.e., security) for risk-significant SSCs
6. Reducing radionuclide releases to the environs and limiting core damage

The containment performance policy issue is directly related to the function of reducing radionuclide releases to the environs (i.e., Function 6). The other functions (1 through 4), though they must be considered in design and construction, are not relevant to this policy issue and are addressed in the framework. Function 5 will be addressed in a separate paper. Therefore, the staff evaluation focuses on Function 6.

For Function 6 (reduce radionuclide releases to the environs), the staff evaluated a technology-neutral performance requirement and four alternative technology-neutral performance criteria (i.e., four options) for the containment. The application of these options to modular high-temperature gas-cooled reactors is further described in Attachment 4.

Of the four options evaluated, the current staff position endorses Option 3 (see Attachment 2):

> The containment must adequately reduce radionuclide releases to the environs to meet the onsite and offsite radionuclide dose acceptance criteria for the events selected for the event categories and have the capability to establish controlled leakage and controlled release of delayed accident source term radionuclides.

Resolution of this issue will also establish a key element of the policy description of defense-in-depth. Option 3 requires that the containment have an independent capability to reduce delayed radionuclide releases to the environment independent of other radionuclide transport barriers associated with the fuel, core, and reactor coolant pressure boundary. This is consistent with the Commission's defense-in-depth safety philosophy that safety functions (e.g., control of fission product release) should not depend on a single element of design, construction, maintenance, or operation.

Issue 3: Level of Safety

In the June 26, 2003, SRM, the Commission approved the staff's recommendation to implement of the Commission's expectations for enhanced safety in future non-light-water reactors.

The Commission approved a process similar to the process used in the certification of the two evolutionary LWRs (the ABWR and the System 80+) and the advanced LWR (the AP-600). This process was used to ensure that the Commission's expectations for safety, as expressed in the Severe Accident Policy Statement (50 FR 32138, August 8, 1985); that is, "The Commission fully expects that vendors engaged in designing new standard...plants will achieve a higher standard of severe accident safety performance than their prior designs." In effect, however, this process resulted in a design-specific determinations of enhanced safety. The issue for Commission consideration with respect to developing a new regulatory structure is what shall the goal in the technology-neutral requirements for achieving enhanced safety be? The Advanced Reactor Policy states that the Commission "expects that advanced reactor designs will comply with the Commission's Safety Goal Policy" and that "advanced reactors will provide enhanced margins of safety." The framework proposes a safety philosophy that will define a level of safety that will meet the expectation of enhanced safety. In the framework, the staff proposes a safety philosophy directly tied to the Commission's 1986 Safety Goal Policy (51 FR 28044); that is, the staff proposes that the technology-neutral requirements be written to achieve the level of safety defined by the Safety Goal Policy Quantitative Health Objectives.

The staff will solicit stakeholder input on this issue in developing a final recommendation for the Commission's consideration.

Issue 4: Definition of Defense-in-Depth

The Commission approved the staff recommendation for developing a definition of defense-in-depth that would be incorporated into a policy statement.

In the framework, defense-in-depth is described as a fundamental concept for treating uncertainties. The definition in the framework is based on combining the guidance provided in Regulatory Guide 1.174 ("An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," Revision 1, November 2002, ML020810773), the Commission direction in the March 1999 Commission white paper (SECY-02-0070), ACRS views (expressed in a May 19, 1999, letter to the Chairman on "The Role of Defense in Depth in a Risk-Informed Regulatory System"), and the description in the NRC Strategic Plan for FY 2004—FY2009. The approach in the framework has the following elements:

- The objectives of defense-in-depth compensate for potential adverse human actions and component failures and maintain the effectiveness of barriers by averting damage to the plant and the barriers themselves to protect the public and environment from harm.

- The principles of defense-in-depth for achieving the objectives are (1) that there should be measures to protect against intentional as well as inadvertent events, (2) that designs should provide accident prevention and mitigation capability, (3) that

accomplishing key safety functions should not depend upon a single element of design, construction, maintenance, or operation, (4) that uncertainties in structures, systems and components (SSCs) and human performance should be accounted for so that reliability and risk goals can be met, and (5) that plants should be sited in areas that meet the intent of Part 100 and are consistent with the siting principles established in Regulatory Guide 4.7 (General Site Suitability Criteria for Nuclear Power Plants).

- The defense-in-depth model integrates deterministic and probabilistic elements. The model should impose certain deterministic defense-in-depth measures with complementary probabilistic guidelines.

- The defense-in-depth implementation should be a decision process showing how to apply the defense-in-depth model. The model includes monitoring and feedback requirements to ensure that the defense-in-depth principles are properly integrated into the design, construction, maintenance, and operation.

After obtaining stakeholder comments on the above items, the staff will develop a proposed revision to the Commission's Policy Statement on the "Use of Probabilistic Risk Assessment Methods in Nuclear Regulatory Activities" (60 FR 42622, August 16, 1995), to incorporate a definition of defense-in-depth for the agency (per the June 26, 2003, SRM). The staff expects that the proposed revision to the policy statement will be available in late 2005.

Issue 5: Use of a Probabilistic Approach to Establish the Licensing Basis

The Commission approved the use of probabilistic criteria for identification of events that must be considered in the design, for safety classification of SSCs and to replace the single failure criterion.

The approach proposed in the framework involves—

- identifying event sequence categories by frequency to define abnormal operational occurrences, design basis events, and beyond-design-basis events

- classifying SSCs as either risk-significant or non-risk-significant based on the SSCs' quantified risk importance and criteria consistent with the work done in support of the 10 CFR 50.69 rulemaking

- replacing the single failure criterion with event sequences from the design-specific probabilistic risk assessment (PRA)

In taking such an approach, licensees will need to maintain a "living" PRA. Accordingly, a process will need to be developed that, over the plant lifetime, provides for changes in plant design or operation identified as a result of the "living" PRA. This process will also need to recognize and be compatible with the design certification process in 10 CFR 52.

Issue 6: Use of Scenario-Specific Source Terms for Licensing Decisions

The Commission approved the use of scenario-specific source terms provided that the staff understands the fission product behavior and plant conditions and performance.

In the framework, the staff used a flexible, performance-based approach to establish scenario-specific licensing source terms. The key features of this approach are as follows:

- Scenarios are to be selected from a design-specific PRA.
- Source term calculations are based on verified analytical tools.
- Source terms for compliance should be 95% confidence level values based on best-estimate calculations.
- Source terms for emergency preparedness should be mean values based on best-estimate calculations.
- Source terms for licensing decisions should reflect scenario-specific timing, form, and magnitude of the release.

This approach puts the burden on the applicant to develop the technical basis. An applicant could, however, propose to use a conservative source term.

Issue 7: Possible Modifications of Emergency Preparedness Requirements

The Commission approved the staff proposal that no change to emergency preparedness requirements is needed in the near term. The Commission also approved, for the longer term, the staff developing guidelines for assessing possible modifications to emergency preparedness requirements as part of the work to develop a description of defense-in-depth. At the present time, the staff has developed a conceptual approach for assessing changes to emergency preparedness, consistent with defense-in-depth considerations.

The conceptual approach is to ensure a baseline emergency preparedness capability, regardless of reactor technology or design, and to expand this baseline where necessary to accommodate the need for more rapid implementation.

Issue 8: Physical Protection

In SECY-04-0157, physical protection for new reactors was raised as a potentially new policy issue. The staff believes it to be a policy issue, but has deferred it in this paper. The staff is continuing to review security for new nuclear plants, is coordinating with NRR, NSIR, and RES, and plans to issue a paper in Spring 2005.

Issue 9: Selective Implementation

In SECY-04-0157, selective implementation was raised as a potentially new policy issue. The staff intends to develop a technology-neutral framework and requirements for new plant

licensing on an integrated basis that will make selective implementation impractical. Identifying selective implementation as a policy issue was not meant to circumvent the exemption process. Since the exemption process will be a part of this regulatory structure, this issue is no longer considered a policy issue.

IMPLEMENTATON

As noted previously, there are difficult technical and policy issues associated with the development and implementation of a technology-neutral framework. It is important to initiate dialogue early in the process with the various stakeholders as the staff develops proposed recommendations for Commission consideration. The staff plans to release this working draft to the public with the intent to have a public workshop in March 2005. It is anticipated that additional stakeholder interaction will occur as the framework is more fully developed. This framework will also show the context of the policy issues, specifically on integrated risk and containment versus confinement. After the public workshop, the staff will provide recommendations on integrated risk, containment versus confinement, and level of safety (to support pre-application reviews) for Commission for approval in June 2005. In addition, due to the complexity of the technical and policy issues in developing and implementing this new licensing process, a technical advisory group is being formed with representatives from the Offices of Nuclear Regulatory Research (RES), of Nuclear Reactor Regulation (NRR), of Nuclear Security and Incident Response (NSIR), and of the General Council (OGC) to ensure the various aspects of each issue are being adequately addressed.

RESOURCES:

The plans discussed in this paper do not require additional resources for implementation. Implementation is included in budgeted activities for developing a framework for new plant licensing and regulatory infrastructure development. Specifically, the current RES budget has 1 FTE and $500K in FY 2005 for this activity. The proposed budget for RES for this activity requests 1 FTE and $400K in FY 2006. NRR does not currently have budgeted resources to participate in the review and development of the new regulatory structure. NRR is considering reprogramming resources to support this effort at a level of 1 FTE for FY 2005 and 1 FTE for FY 2006.

Beyond FY 2006, resources will be requested through the PBPM process.

COORDINATION:

The Office of the General Counsel has no legal objection. The Office of the Chief Financial Officer has reviewed this Commission paper for resource implications and has no objections.

CONCLUSION:

Shortly after this paper, the staff plans to issue a working draft of the framework to engage stakeholder input. A public workshop is scheduled in the March 2005 timeframe. Although the staff discussed the options and positions proposed in this paper on the issues of integrated risk and containment, the staff is not asking for Commission approval at this time. The staff believes that these issues would be better addressed in the overall context of the framework. Therefore, the staff intends after the March workshop to address the public input on these two

issues and on the issue regarding level of safety. The staff will provide a recommendation to the Commission on these issues in June 2005. This schedule will support the ongoing efforts on pre-application for new reactors. The staff will also alert the Commission of any new policy issues associated with implementing the technology-neutral framework for new plant licensing by December 2005. The staff will also provide for Commission approval a definition of defense-in-depth to be incorporated into the Commission's PRA Policy Statement.

/RA/

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Attachments:
1. Regulatory Structure for New Plant Licensing, Part 1: Technology-Neutral Framework (Working draft)
2. Detailed Summary on the Policy Issues Needed to Support Pre-Application Reviews
3. Detailed Summary on the Policy Issues Associated with Technology-Neutral Framework for New Plant Licensing
4. Evaluation of Containment Functional Performance Criteria for High-Temperature Gas-Cooled Reactors

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