

RULEMAKING ISSUE
(Affirmation)

December 14, 2005

SECY-05-0227

FOR: The Commissioners

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

SUBJECT: FINAL RULE — AP1000 DESIGN CERTIFICATION

PURPOSE:

To obtain the Commission's approval to publish in the *Federal Register* the enclosed final rule that amends Part 52 of Title 10 of the *Code of Federal Regulations* (10 CFR Part 52) to certify the AP1000 standard plant design. This paper does not address any new commitments or resource implications.

BACKGROUND:

Westinghouse Electric Company (Westinghouse) submitted an application for certification of its AP1000 standard plant design on March 28, 2002. The Nuclear Regulatory Commission (NRC) staff completed its technical review of the AP1000 application and issued NUREG-1793, "Final Safety Evaluation Report [FSER] related to Certification of the AP1000 Standard Design," and a final design approval (FDA) in September 2004.

DISCUSSION:

On April 18, 2005 (70 FR 20062), the NRC published a proposed design certification rule (DCR) for the AP1000 standard plant design. The *Federal Register* notice gave the public an opportunity to comment on the proposed DCR, the AP1000 design control document (DCD) (Revision 14), and the environmental assessment. The *Federal Register* notice was also sent

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to all State liaison officers and public utility commissions. The NRC received four letters in response to the *Federal Register* notice, three from private citizens and one from the Nuclear Energy Institute (NEI). The comments addressed the proposed DCR, the AP1000 DCD, and the environmental assessment. A discussion of the comments is provided in the *Federal Register* notice.

The final DCR for the AP1000 standard plant design is nearly identical to the AP600 DCR, which the NRC previously codified in Appendix C to 10 CFR Part 52 (64 FR 72015; December 23, 1999). Many of the procedural issues and their resolutions for the AP600 DCR (e.g., the two-tier structure, Tier 2*, the scope of issue resolution) were developed after extensive discussions with public stakeholders, including Westinghouse. Westinghouse also requested that policy resolutions for the AP600 design review be applied to the AP1000 design. Accordingly, the NRC staff has modeled the AP1000 DCR on the existing DCRs, with certain departures to account for differences in the AP1000 design documentation, design features, and environmental assessment (including severe accident mitigation design alternatives). In response to some of NEI's comments (see the comment analysis), the staff has amended the final DCR to make it consistent with other DCRs in the revised proposed rule to update 10 CFR Part 52 (SECY-05-0203, "Revised Proposed Rule to Update 10 CFR Part 52, 'Licenses, Certifications, and Approvals for Nuclear Power Plants' ").

By letter dated September 7, 2005 (DCP/NRC 1722), Westinghouse submitted proposed changes to the AP1000 Tier 1 information. As a result of the NRC staff's review, Westinghouse submitted revised changes to the AP1000 DCD by letters dated November 1, 2005 (DCP/NRC 1723), and November 3, 2005 (DCP/NRC 1724), addressing the staff's comments. Westinghouse incorporated the changes in Revision 15 of the DCD. The proposed changes to the AP1000 DCD include editorial and minor technical changes, corrections, and clarifications to the inspections, tests, analyses, and acceptance criteria (ITAAC) in the Tier 1 information. These changes were identified by Westinghouse as a result of NEI and NuStart efforts to prepare for future combined license applications. The staff determined that most of these changes do not affect the staff's findings in the AP1000 FSER and are acceptable. For a few changes, a new evaluation is provided in a supplement to the FSER (NUREG-1793, Supplement No. 1). The FSER and Supplement No. 1 provide the bases for the Commission's approval of the AP1000 standard plant design. A new FDA, which incorporates Revision 15 to the DCD, will be issued to supersede the current FDA after issuance of this final design certification rule.

RECOMMENDATION:

That the Commission:

1. Approve the amendment to 10 CFR Part 52 (Enclosure 1) for publication in the *Federal Register*.
2. Approve the final environmental assessment in Enclosure 2.
3. Certify (to satisfy requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b)) that this rule, if promulgated, will not have a negative economic impact on a substantial number of small entities.

4. Note:

- a. This rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule has been reviewed by the Office of Management and Budget, and the paperwork requirements were approved on (date to be filled in upon FRN publication).
- b. The Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification regarding the economic impact on small entities and the reasons for it as required by the Regulatory Flexibility Act (Section VII of the *Federal Register* notice).
- c. The appropriate congressional committees will be informed.
- d. The Office of Public Affairs will issue a press release.

COORDINATION:

The Office of the General Counsel has no legal objection to this paper. The Office of the Chief Financial Officer has reviewed this Commission paper for resource implications and has no objection. The Office of the Information Services has reviewed this final rule for information technology and information management implications and concurs with the rule. A draft copy of the *Federal Register* notice was sent to the Advisory Committee on Reactor Safeguards (ACRS) for the Committee's consideration. On November 15, 2005, the ACRS issued a memo stating that the Committee decided not to review the final rule and has no objection to the staff's proposal to issue the final rule.

The NRC staff is preparing a letter to the Director, Office of the Federal Register (OFR), requesting approval of the AP1000 DCD for incorporation by reference. The letter will be sent to the OFR before we request publication of the *Federal Register* notice and will address the criteria for approval of documents for incorporation by reference.

/RA/

Luis A. Reyes
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for Operations

Enclosures:

1. *Federal Register* notice
2. Environmental Assessment

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***Via E-Mail **Via Memo WITS #200500087**

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