

MEMORANDUM TO: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons

December 27, 2005

FROM: Luis A. Reyes **/RA Martin J Virgilio Acting for/**
Executive Director for Operations

SUBJECT: RESPONSE TO STAFF REQUIREMENTS MEMORANDUM
(M051121B), BRIEFING ON THE STATUS OF NEW REACTOR
ISSUES, REGARDING REVISED PROPOSED RULEMAKING FOR
10 CFR PART 52, "LICENSES, CERTIFICATIONS, AND APPROVALS
FOR NUCLEAR POWER PLANTS"

On November 3, 2005, the staff forwarded SECY-05-0203, "Revised Proposed Rule to Update 10 CFR Part 52, 'Licenses, Certifications, and Approvals for Nuclear Power Plants,'" to the Commission. In SECY-05-0203, the staff recommended that the Commission approve publication in the *Federal Register* of revised proposed revisions to 10 CFR Part 52 and to requirements in related sections of Title 10 Chapter 1 which would withdraw and supersede the Commission's July 3, 2003 (68 FR 40026), proposed rule on 10 CFR Part 52. The revised proposed rule contains a rewrite of Part 52, as well as changes throughout the Commission's regulations to enhance the Nuclear Regulatory Commission's (NRC) regulatory effectiveness and efficiency in implementing the licensing and approval processes in Part 52 and to clarify the applicability of various requirements to each of the regulatory processes in Part 52 (i.e., early site permit, standard design approval, standard design certification, combined license, and manufacturing license). This rulemaking is based on comments on the 2003 proposed rule, lessons learned during design certification and early site permit (ESP) reviews, and discussions with stakeholders on the combined license (COL) review process. The staff believes that completion of this rulemaking will provide early resolution of generic issues that would otherwise have to be addressed during NRC review of the first COL applications.

On December 19, 2005, the Commission issued a staff requirements memorandum (SRM, M051121B) on the briefing on the status of new reactor issues that occurred on November 21, 2005. In its SRM, the Commission directed the staff, in coordination with the Office of the General Counsel (OGC), to examine options to accelerate the rulemaking schedule for revisions to Part 52. Specifically, the Commission directed the staff to address two options: (1) expediting the proposed rule that is currently before the Commission; and (2) creating and fast tracking a greatly reduced scope version of the current proposed rule. The SRM further directed the staff to provide the Commission with a discussion of the regulatory advantages, and time and resources needed for each option, including the need for

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and timing of public workshops, with the goal to assure that an enhanced and stable regulatory framework will be in place to support applicant preparation of potential COL applications to be submitted in 2007.

The staff made the following schedule and resource estimates for the two scenarios for proceeding with the Part 52 rulemaking addressed in the Commission's SRM and discussed above. To make its estimate for the second option, the staff has assumed that the "greatly reduced scope version of the current proposed rule" that the Commission refers to is a rule that is roughly 50 percent of the scope of the proposed rule provided in SECY-05-0203.

Publishing Proposed Part 52 Rule in SECY-05-0203

Task	Time	Resources	
		NRR	OGC
1. Prepare proposed rule for publication	2 weeks	2 staff-weeks	1.5 staff-week
2. ADM & OFR review period	2 weeks	minimal	minimal
3. Comment period	11 weeks	0 staff-weeks	0 staff-weeks
4. Public Workshop	0 weeks (during comment period)	2 staff-weeks	0.5 staff-weeks
5. Prepare comment analysis	12 weeks	28 staff-weeks	10 staff-weeks
6. Revise rule text and statements of consideration (SOC) files based on comments	4 weeks	8 staff-weeks	4 staff-weeks
7. Prepare section-by-section analysis for Part 52**	6 weeks, however most of this work could be done during the comment period, so only 2 weeks is estimated to be added to schedule	15 staff-weeks	6 staff-weeks
8. Redraft Regulatory Analysis based on comments	1 week	1 staff-week	0.5 staff-weeks
9. Review & concurrence by other offices & NRR management††	6 weeks	4 staff-weeks	2 staff-weeks
10. EDO Review	1 week	minimal	minimal
TOTAL	41 weeks . 10 months	60 staff-weeks	24.5 staff-weeks

**Note that a section-by-section analysis has never been prepared for Part 52 so this task reflects creation of such an analysis for every section in Part 52.

††Time frame based on staff experience with large rules. May be able to improve using innovative concurrence options.

Publishing “Reduced Scope” Proposed Part 52 Rule

Task	Time	Resources	
		NRR	OGC
1. Develop & obtain management approval of criteria for reducing scope	1 week	1 staff-week	0.5 staff-weeks
2. Identify changes to go forward in “reduced scope” proposed rule	2 weeks	4 staff-weeks	2 staff-weeks
3. Prepare new rule text and SOC files based on reduced scope	2 weeks	3 staff-weeks	1.5 staff-weeks
4. Redraft Regulatory Analysis based on reduced scope	2 weeks	1 staff-week	0.5 staff-weeks
5. Prepare proposed rule for publication	1 week	1 staff-week	0.5 staff-weeks
6. ADM & OFR review period	2 weeks	0 staff-weeks	0 staff-weeks
7. Comment period	11 weeks	0 staff-weeks	0 staff-weeks
8. Public Workshop	0 weeks (during comment period)	2 staff-weeks	0.5 staff-weeks
9. Prepare comment analysis	6 weeks	14 staff-weeks	5 staff-weeks
10. Revise rule text and SOC files based on comments	2 weeks	4 staff-weeks	2 staff-weeks
11. Prepare section-by-section analysis for Part 52**	6 weeks, however most of this work could be done during the comment period, so only 2 weeks is estimated to be added to schedule	15 staff-weeks	6 staff-weeks
12. Redraft Regulatory Analysis based on comments	1 week	1 staff-week	0.5 staff-weeks
13. Review & concurrence by other offices & NRR management ††	6 weeks	3 staff-weeks	1 staff-week
14. EDO Review	1 week	minimal	minimal
TOTAL	39 weeks . 9 months	49 staff-weeks	20 staff-weeks

**Note that a section-by-section analysis has never been prepared for Part 52 so this task reflects creation of such an analysis for every section in Part 52.

††Time frame based on staff experience with large rules. May be able to improve using innovative concurrence options.

The staff estimates that it would take approximately 10 months and 84.5 staff-weeks of combined Office of Nuclear Reactor Regulation (NRR) and OGC effort to publish the revised proposed rule in SECY-05-0203, address comments on the proposed rule, and submit a final rule package to the Commission. In comparison, the staff estimates that it would take approximately 9 months and 69 staff-weeks of combined NRR and OGC effort to separate the revised proposed rule in SECY-05-0203 to identify what portion should be published in a reduced-scope proposed rule, revise the rulemaking package, publish the proposed rule, address comments on the proposed rule, and submit a final rule package to the Commission. Under this scenario, the staff would also recommend pursuing another proposed rule at a later time containing the remainder of the changes in the current proposed rule. The staff based the estimates for both of the scenarios on the assumption that the Commission will agree with the staff's proposal to forego review of a final rule by the Advisory Committee on Reactor Safeguards and the Committee to Review Generic Requirements. In addition, the staff assumed that the Commission will not extend the proposed 75-day comment period and that the number and scope of comments received on the proposed rule for the first option (SECY-05-0203 version) would be similar to the number and scope of comments received on the 2003 proposed rule. The Part 52 rulemaking would have to be given the highest priority to ensure dedication of OGC reactor-related rulemaking resources.

With regard to conducting a public workshop on the Part 52 rulemaking, the staff believes that, under either scenario, it will be most efficient and effective to conduct the workshop after publication of the proposed rule, during the public comment period. Holding a public workshop before the NRC publishes the proposed rule will lengthen the schedule needed to reach a final rule and such a path would take the staff outside of its normal rulemaking processes.

The staff believes that proceeding with the proposed rule it presented in SECY-05-0203 provides the greatest regulatory advantage by affording a high degree of predictability to the licensing processes in Part 52 and providing increased clarity to all parties involved in the licensing process. Issues resolved in the rule will not have to be addressed on a case-by-case basis during staff review of applications. Unfortunately, the timing of issuance of the proposed rule could cause some uncertainty for prospective applicants preparing COL applications in 2006.

A "reduced scope" proposed rule such as that mentioned in the Commission's second option was also proposed by the Nuclear Energy Institute (NEI) in a December 14, 2005, letter to the Chairman. In its letter, NEI suggested that the staff issue a proposed rulemaking, significantly reduced in scope from that recommended by the staff, and do so on an expedited schedule. Issuance of such a rule offers the regulatory advantage of potentially reducing the number of comments received on the proposed rule and thereby reducing the time it takes the staff to address the comments and issue a final rule. However, as reflected in the staff's schedule estimate, any such savings in time for comment resolution would likely be offset by the initial investment in time necessary to revise the current proposed rule to specifically identify what portion should go forward under a "reduced scope" concept. In addition, the NRC, the industry, and other stakeholders would lose much of the value in the 2005 rule gained from incorporating lessons learned during ESP and design certification reviews and interactions with stakeholders on the COL process. Finally, a "reduced scope" rule such as that in NEI's proposal could leave several issues pertaining to COLs unresolved which could impact both staff and industry resources and schedules during individual COL reviews in 2008 and beyond. The staff believes that resolution of such issues is beneficial in the long term and that such benefit outweighs

possible short-term uncertainty for prospective COL applicants resulting from the temporary lack of a final rule.

To aid the Commission in its deliberations on the Part 52 proposed rulemaking, given the December 14 NEI letter, the staff has performed a quick analysis of the items in Enclosure 3 to the NEI letter that were under the heading, "Detrimental Changes in the Proposed Part 52 Rulemaking Language." The staff analysis is included in the enclosure to this memorandum. NEI also included a list of "Proposed Changes Having No Clear Benefit or Need" in Enclosure 4 to its letter. The staff's preliminary view is that the proposed rule changes cited by NEI in Enclosures 3 and 4 are necessary to meet the staff's objectives of improving the effectiveness and efficiency of the Part 52 licensing process and providing increased clarity as to the applicability of requirements to Part 52 processes. The extent to which NEI's objections to the proposed changes have merit is best determined, however, in concert with other comments received in response to a public process. In addition, the staff believes that the NEI issues can be resolved within the time frames provided earlier in this paper.

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