

### **C.III.3. Finality of an EIS Associated with an ESP**

A COL applicant may reference an early site permit (ESP). In this situation, the NRC has established a unique relationship between these two major Federal actions - the ESP and COL. In addition, a COL applicant may reference a certified design or a design with a manufacturing license. Either of these approvals may contain the conclusions from an associated environmental assessment (EA) or environmental impact statement (EIS), which may be used in the COL application and considered by the NRC staff. The discussion that follows is applicable only to these special circumstances involving the referencing of an ESP, a certified design, or a manufacturing license in a COL application.

In reviewing an ESP application, the NRC staff prepares an EIS to inform the Commission's decision and disclose the environmental impacts associated with constructing and operating one or more nuclear units. Consequently, the EIS is an important starting point for preparing a COL applicant's Environmental Report (ER). However, it should be noted that the EIS (and not the applicant's ER) provides the basis for issuing the ESP. As such, the EIS prepared for an ESP would resolve issues within certain bounding conditions, and such issues are candidates for preclusion at the COL stage. An issue resolved in the EIS is afforded finality at the COL stage, provided that no "new and significant" information has become available on the issue. By contrast, if a given environmental issue was not resolved at the ESP stage, either because sufficient information was not available to permit resolution or because the ESP applicant was permitted to defer the issue (e.g., the benefits assessment), the COL applicant must address the issue in its COL application. A COL application must also demonstrate that the design of the facility falls within the parameters specified in the ESP. In addition, the COL application should indicate whether the site is compliant with the terms and conditions of the ESP.

The NRC is ultimately responsible for completing any review required to fulfill its responsibilities under the National Environmental Policy Act, for example, to ensure that the conclusions regarding a resolved ESP environmental issue remain valid for a COL action. However, the COL applicant (the proponent for the action) is expected to initially identify whether any "new and significant" information has become available for such an issue. Thus, a COL applicant should have a reasonable process to ensure that it becomes aware of "new and significant" information that may bear on the earlier NRC conclusion, and should document the results of this process in an auditable form for issues for which the COL applicant does not identify any "new and significant" information. Under 10 CFR 51.70(b), the NRC is required to independently evaluate and be responsible for the reliability of all information used in the EIS, including an EIS prepared for a COL application. Toward that end, the NRC staff may (1) inquire into the continued validity of information disclosed in an EIS for an ESP that is referenced in a COL application, and (2) look for any new information that may affect the assumptions, analyses, or conclusions in the ESP EIS.

The "new and significant" information that a COL applicant must address in its ER includes any information regarding the site or design to the extent that it differs from, or is in addition to, that discussed in the ESP EIS. In the context of a COL application that references an ESP, the NRC staff defines "new" (in "new and significant" information) as any information that was not provided or referenced in the ESP application or the related EIS. This new information may include (but is not limited to) specific design information that was not provided in the ESP application (especially where the design interacts with the environment), or information that was

in the ESP application, but has changed by the time of the COL application [for example, a change in the regional socioeconomic profile resulting from a natural event (e.g., Hurricane Katrina)]. New information may or may not also be “significant.”

The NRC expects the COL applicant referencing an ESP to have a reasonable process with certain attributes to ensure that the applicant would become aware of “new and significant” information, and to describe the process in its COL ER. This process description should include (1) the methods that the COL applicant uses to ensure that it is cognizant of new information, if it exists, and (2) the process for evaluating the significance of new information, if found. Methods to ensure cognizance of new information include the following examples:

- reviewing environmental monitoring results
- reviewing related scientific literature
- surveying environmental professionals familiar with the site environs (for example, the environmental and operations staff of a nearby nuclear or other industrial facility)
- exchanging information within the industry through peer groups and industry organizations
- consultations with academicians knowledgeable of the local environment
- consultations with Federal, State, Tribal, and local environmental, natural resource, permitting, and land use agencies

The description of the process for evaluating the significance of new information should also include the organizational procedures for handling reports of new information and the criteria used to determine the applicability of such information. Detailed supporting information need not be included in the ER, but should be available in auditable form for review by the NRC staff. Such supporting information may include the following:

- qualifications of participants involved in the process, their organizational affiliations, how they interact among themselves, and the role they serve in the process
- any consultations with academicians and Federal, State, Tribal, and local environmental, natural resource, permitting, and land use agencies
- any new information identified and the assessment of its significance

In the past, the NRC staff has explained the relationship between the environmental review of an ESP application and that of a COL application referencing the ESP by analogy to the environmental review process for license renewal. In fact, the process described above for a COL applicant referencing an ESP is consistent with the well-established and clearly understood process for license renewal. For additional information and purposes of comparison, the attributes of the process to identify “new and significant” information for license renewal applications is described in Regulatory Guide 4.2, Supplement 1, “Preparation of Supplemental Environmental Reports for Applications to Renew Nuclear Power Plant Operating Licenses,” dated September 2000.

Similarly, for environmental matters resolved in a design certification EA or a manufacturing license EA, the COL ER should address any “new and significant” information regarding the site or design, to the extent that it differs from, or is in addition to, that discussed in the EA. Also, as in the earlier discussion, in the context of a COL application that references a certified design or manufacturing license, the NRC staff defines “new” (in “new and significant” information) as any

information that was not contained or referenced in the design certification or manufacturing license application or the related EA. This new information may include (but is not limited to) how the design interacts with the environment, such as the actual dispersal and demographic information in the context of the bounding values considered in the EA. Again, new information may or may not also be “significant.”

For matters resolved at the ESP stage or in an EA associated with a certified design or manufacturing license, if there is no new and significant information that differs from that discussed in the ESP EIS or EA, the NRC staff will rely upon (“tier off”) the ESP EIS or EA, and will disclose its conclusion for matters covered in the environmental review for the ESP EIS or EA. Toward that end, the COL EIS will provide a summary discussion of the NRC staff’s conclusion from the ESP EIS or EA. This approach to ensure that the EIS is complete is also based on the successful methods used in the environmental review process for license renewal. Absent “new and significant” information, such matters will not be subject to litigation at the COL stage, even though they are included in the COL EIS.

In summary, the initial burden to assess newly identified information and issues that were deferred to the COL application falls to the COL applicant. Thus, the NRC staff expects the COL applicant to provide sufficient information to resolve any significant environmental issues that were not considered in the ESP proceeding, for either the site or the design. In addition, the information contained in the COL application should be sufficient to aid the NRC staff in developing its independent analysis (see 10 CFR 51.45).