

PR 2, 50, 51 and 52  
(71FR61329)



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OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

November 16, 2006

UN# 06-012

Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

ATTN: Rulemaking and Adjudications Staff

Subject: UniStar Nuclear Comments on Supplemental Proposed Rule, "Licenses, Certifications, and Approvals for Nuclear Power Plants," issued October 17, 2006 in Volume 71 of the Federal Register, Page 61330, dated November 16, 2006, (RIN 3150-AG24)

Reference: Letter from Adrian Heymer (Nuclear Energy Institute) to Annette L. Vietti-Cook (NRC), "Licenses, Certifications, and Approvals for Nuclear Power Plants, NRC Supplemental Proposed Rule re: Limited Work Authorizations, 71 Fed. Reg. 61,330 (October 17, 2006) (RIN 3150-AG24)," dated November 16, 2006

UniStar Nuclear, LLC, strongly supports the subject supplemental proposed rule applicable to Limited Work Authorizations (LWAs). The supplements proposed should make the LWA approval process more streamlined and substantially more useful for prospective nuclear power plant Combined License (i.e., COL) applicants. These and other proposed changes promulgated as part of the 10 CFR 52, "Early Site Permits; Standard Design Certifications: and Combined Licenses for Nuclear Power Plants," rulemaking will enhance the overall efficiency of the NRC reactor licensing and approval process, provide greater licensing certainty, and reduce licensing risk. It will also focus the industry and the NRC on those issues that are most important to radiological health and safety and/or common defense and security and thus improve nuclear safety.

UniStar Nuclear has participated in the development of and endorses the comments on this rulemaking that are provided by the Nuclear Energy Institute (NEI) in the referenced letter.

While UniStar Nuclear considers this supplemental proposed rule to be a substantial enhancement of the LWA process, UniStar Nuclear offers further clarification of NEI's comments in Section V.C., "Enhancing the Usefulness of the LWA Phased Application,"

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transmitted by the referenced letter. Our additional comments are provided in the enclosure.

Please contact me at (410) 230-4892, if there are any questions.

Respectfully,

A handwritten signature in black ink, appearing to read "R. M. Krich". The signature is written in a cursive style with a large, stylized initial "R".

R. M. Krich

Enclosure: UniStar Nuclear Comments Supplementing the Nuclear Energy Institute's Comments in Section V.C., "Enhancing the Usefulness of the LWA Phased Application," provided by its letter dated November 16, 2006

**Enclosure**  
**NRC Supplemental Proposed Rule, "Licenses, Certifications, and Approvals for Nuclear Power Plants," Volume 71 of the Federal Register, Page 61330, issued October 17, 2006 (RIN 3150-AG24)**

UniStar Nuclear Comments Supplementing the Nuclear Energy Institute's Comments in Section V.C., "Enhancing the Usefulness of the LWA Phased Application," provided by its letter dated November 16, 2006

Background

Pursuant to 10 CFR 2.101(a)(5), an applicant for a Combined License (i.e., COL) may submit the information required of applicants by 10 CFR 50 in two parts: (1) one part shall be accompanied by the information required by 10 CFR 50.30(f) (i.e., the Environmental Report), and (2) one part shall include any information required by 10 CFR 50.34(a) and, if applicable, 10 CFR 50.34a (i.e., the Safety Analysis Report). As currently allowed by 10 CFR 2.101(a)(5), one part may precede or follow other parts by no more than six months. This is a phased COL submittal process.

The proposed Limited Work Authorization (LWA) rule also provides for phased LWA submittals. Specifically, proposed Section 2.101(a)(9) authorizes the licensee to submit the LWA, including supporting environmental documentation, up to 12 months before submission of the remainder of a COL application. However, the LWA rule does not authorize an applicant to use the phased COL approach in 10 CFR 2.101(a)(5). Instead the phased LWA process in 10 CFR 2.101(a)(9) is limited to COL applications submitted under 10 CFR 2.101(a)(1)-(4).

According to proposed Section 51.49, paragraphs (b) and (f), an applicant for an LWA may submit an Environmental Report (ER) limited to a discussion of the activities proposed to be conducted under the LWA (i.e., LWA-ER) or, at the option of the applicant, submit an ER that contains the information required to be submitted in the ER required under 10 CFR 51.50, which addresses the impacts of construction and operation for the proposed facility and discusses the overall costs and benefits balancing for the proposed action (i.e., the "full-scope" ER).

If the application for an LWA is submitted under 10 CFR 2.101(a)(9), proposed 10 CFR 51.76(b) states that the draft Environmental Impact Statement (EIS) "may be limited to the consideration of the activities proposed to be conducted under the LWA." If, however, the applicant submitted a full-scope ER, then the draft EIS will not consider siting issues, including whether there is an obviously superior site, or issues related to operation of the plant at the site, including the need for power. Instead, after part two of the application is docketed, the NRC will prepare a supplement to the EIS.

When read together, the phased COL process and the phased LWA process cannot be used on the same application. This means that an applicant who wants to take advantage of the early submittal process in 10 CFR 2.101(a)(5), and the benefits associated with early the NRC review of the ER and an accelerated hearing schedule, cannot apply for an LWA. Conversely, an applicant who wants to request an LWA and has prepared a full-scope ER will not be able to obtain the benefits of the early submittal in the form of a full-scope EIS or

an accelerated hearing schedule. The approach suggested below combines the benefits of the two approaches without the disadvantages of either.

#### Specifics Comments

The timing provisions of 10 CFR 2.101(a)(5) should be consistent with the timing of the phased approach embodied in the proposed LWA rule. There is no apparent reason for limiting the phased approach in 10 CFR 2.101(a)(5) to submissions within six months of each other when the proposed LWA rule permits submissions up to 12 months apart. Indeed, the National Environmental Policy Act (NEPA) segmentation concerns that drive the 12-month limitation do not exist where a complete ER is submitted under 10 CFR 2.101(a)(5) since all of the environmental information is submitted simultaneously.

On a related note, if an applicant elects to submit a full-scope ER using the early submittal provisions of 10 CFR 2.101(a)(5), the applicant should be allowed to request an LWA based on that early-ER submittal. This would merge the applicant's option of submitting a full-scope ER under 10 CFR 2.101(a)(9) with the requirement that the early-ER be a full-scope ER under 10 CFR 2.101(a)(5). More information would be available to the NRC and public in this scenario than would be available if an applicant only submitted an LWA-ER under the proposed 10 CFR 2.101(a)(9), while the same information would be available if the applicant submitted the optional full-scope ER with the LWA application.

Finally, if an applicant elects to submit a phased COL application under 10 CFR 2.101(a)(5), the NRC should issue a notice of docketing and opportunity to request a hearing on each complete part of the application. Although the draft Statement of Policy on the Conduct of New Reactor Licensing Proceedings issued by the NRC on October 20, 2006, suggests that the NRC will await the complete application before issuing a notice of hearing, the NRC should instead issue a notice of hearing for each "complete" part of an application submitted under 10 CFR 2.101(a)(5). This lessens the burden on the NRC staff, applicants, and potential intervenors who would otherwise have to review both the safety and environmental portions of an application simultaneously. This process would also simplify the environmental reviews of the NRC staff, who otherwise would have to articulate and define the limits of the environmental review associated with an LWA. Instead of two EISs, one for the LWA and one for the COL, or an LWA-EIS and a Supplemental EIS for the COL, the suggested process would result in a single EIS. In addition, there would be a single adjudicatory hearing on the full-scope ER and subsequent EIS, rather than two hearings based on the LWA application and the subsequent license application.

Taken in the aggregate, the three comments work together to achieve the same goal: early review of all environmental issues in a single proceeding (i.e., avoiding the piecemeal litigation of separate LWA and full-scope environmental documents) without any duplication of NRC, applicant, or intervenor resources. This proposal does not create any new or different NRC reviews nor eliminate any opportunities to request a hearing. Instead, the suggested changes clarify that a simpler, comprehensive approach is available for those applicants that have prepared a full-scope ER rather than a more-limited LWA-specific ER.

| <b>Summary of Alternative Procedures</b>             |                           |  |                                    |
|--|---------------------------|--|------------------------------------|
|  | <b>10 CFR 2.101(a)(5)</b> | <b>10 CFR 2.101(a)(9)</b>  | <b>Proposed Alternative</b>        |
| <b>Requested Approval</b>                            | COL only                  | LWA and COL  | LWA and COL                        |
| <b>Month 0</b>                                       |                           | LWA-ER or Full-Scope ER<br><b>and</b><br>LWA                                       | Full-Scope ER<br><b>and</b><br>LWA |
| <b>Month 6</b>                                       | Full Scope ER<br>(no LWA) |  |                                    |
| <b>Month 12</b>                                      | Remainder of Application  | Full Scope ER, if not already submitted,<br><b>and</b><br>Remainder of Application | Remainder of Application           |
| <b>Environmental Documents Prepared by Applicant</b> | Full Scope ER             | LWA-ER<br><b>and/or</b><br>Full Scope ER   | Full Scope ER                      |
| <b>Environmental Documents Prepared by NRC Staff</b> | EIS                       | EIS (for LWA)<br><b>and</b><br>EIS (for COL) or Supplemental EIS                   | EIS                                |

Proposed Specific Rule Language Changes

**10 C.F.R. 2.101(a)(5):**

An applicant for a combined license or construction permit for a production or utilization facility which is subject to § 51.20(b) of this chapter, and is of the type specified in § 50.21(b)(2) or (3) or § 50.22 of this chapter or is a testing facility may submit the information required of applicants by part 50 of the chapter in two parts. One part shall be accompanied by the information required by § 50.30(f) of this chapter, another part shall include any information required by § 50.34(a) and, if applicable, § 50.34a of this chapter. One part may precede or follow other parts by no longer than **twelve (12)** ~~six (6)~~ months. If it is determined that either of the parts as described above is incomplete and not acceptable for processing, the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, will inform the applicant of this determination and the respects in which the document is deficient. Such a determination of completeness will generally be made within a period of thirty (30) days.

Whichever part is filed first shall also include the fee required by §§ 50.30(e) and 170.21 of this chapter and the information required by §§ 50.33, 50.34(a)(1) and 50.37 of this chapter. The Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, will accept for docketing an application for a construction permit for a production or utilization facility which is subject to § 51.20(b) of this chapter, and is of the type specified in § 50.21(b)(2) or (3) or § 50.22 of this chapter or is a testing facility where one part of the application as described above is complete and conforms to the requirements of part 50 of this chapter. **A separate notice of hearing shall be published for each part of the application and should set forth the matters of fact and law to be considered, as required by § 2.104, which will be modified to state that the hearing will relate only to the matters in that part of the application.** The additional parts will be docketed upon a determination by the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, that it is complete.

**10 C.F.R. 50.10(c)(2):**

An application for a limited work authorization may be submitted as part of a complete application for a construction permit or combined license in accordance with 10 CFR 2.101(a)(1) through (4), or as a partial application in accordance with 10 CFR 2.101(a)(9). **An application for a limited work authorization may also be submitted with a complete part of an application in accordance with 10 CFR 2.101(a)(5).** An application for a limited work authorization must be submitted by an applicant for or holder of an early site permit as a complete application in accordance with 10 CFR 2.101(a)(1) through (4).