

November 21, 2006

MEMORANDUM TO: Eileen M. McKenna, Chief
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation

FROM: Harry S. Tovmassian /RA/
Regulatory Analysis, Policy, and Rulemaking Branch
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation

SUBJECT: SUMMARY OF PUBLIC MEETING TO ANSWER STAKEHOLDER
QUESTIONS PERTAINING TO SECTION 52.99 (INSPECTION DURING
CONSTRUCTION) OF THE DRAFT FINAL RULE LANGUAGE FOR 10
CFR PART 52, "LICENSES, CERTIFICATIONS, AND APPROVALS FOR
NUCLEAR POWER PLANTS"

The U.S. Nuclear Regulatory Commission (NRC) held a Category 3 public meeting on November 17, 2006, to answer stakeholder questions about section 52.99 (Inspection during construction) of the draft final rule language for 10 CFR Part 52, Licenses, Certifications, and Approvals for Nuclear Power Plants," that was part of the final rule sent to Commission in SECY-06-0220. A list of attendees is provided in Enclosure 1. Industry representatives stated their intention to provide written comments to the Commission on this subject by December 1, 2006. The staff noted that since the staff has provided its recommendation to the Commission, any subsequent reaction would be from the Commission.

The major areas of discussion are summarized as follows:

1. Industry participants noted that §52.99(a) refers to submitting schedules for Inspection, Test, Analysis and Acceptance Criteria (ITAAC) one year after issuance of a combined license (COL). They asked about the situation where a licensee may decide not to immediately begin construction after issuance of a combined license, and whether a different time for submittal would be possible. The NRC explained that the one year window was intended to allow a licensee time to develop its detailed ITAAC schedule. The rule language was developed with the anticipation that a COL would move into construction soon after the license was issued and thus the time was tied to COL issuance.
2. In § 52.99(c), there was considerable discussion about the wording that the notification letter contain sufficient information to demonstrate that ITAAC are met. Some of the audience thought this would require all of the information developed by the licensee to be submitted. NRC clarified its intention that the set of information submitted is only a

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subset of the totality that provides the basis for the licensee's conclusion that those ITAAC are met. The NRC noted that there are two considerations underlying this requirement: first, is what information the NRC staff needs to perform its verification activities, and second is information for the public that NRC will require the licensee to make publicly available to meet its statutory obligation under the Section 189 of the Atomic Energy Act of 1954, as amended by the 1992 Energy Policy Act, for a meaningful opportunity for a potential petitioner to assess and meet the threshold as to whether an ITAAC has been, or will be, met. Industry participants stated that no information should be submitted to the NRC other than a notification and, possibly, an index or cross-reference to the applicable supporting licensee documents (but not the documents themselves). Industry participants also stated that there is no statutory requirement for the licensee to provide information to the public for the purpose of facilitating preparation of contentions that satisfy the prima facie standard in Section 189 of the AEA. Rather, they believe interested members of the public must rely upon either NRC staff inspection reports on ITAAC, or "extrinsic information" (e.g., a worker with information of wrongdoing). The NRC responded that it is the licensee's obligation to demonstrate that they have successfully completed the ITAAC.

The industry participants' suggestion would also, as a practical matter in a contested hearing under § 52.103: (i) shift the focus of the hearing to the NRC inspection reports, rather than the licensee's bases for ITAAC completion; and (ii) require the NRC staff to participate in the hearing. The NRC indicated that these consequences would be undesirable from a NRC resource standpoint, as well as public confidence.

The NRC and the industry participants discussed a few examples to help understand what type of information should be included. The NRC acknowledged that regulatory guidance would be necessary in this area, and reiterated its intention that the guidance would be developed with stakeholder input.

3. There was also discussion about § 52.99(c)(2), with respect to the information to be included in the 225 day notification for those ITAAC not yet complete. Industry stated that they agree with the concept of this notification and think the information would be similar to that required under (c)(1). The NRC said the nature of the information might be different due to the more predictive finding of "will be met." However, the NRC also indicated that the level of detail would likely not differ under paragraphs (c)(1) or (c)(2).
4. An industry participant asked why, under § 52.99(e)(1), the NRC would stop issuing notices of its determinations of successful completion of ITAAC after the last day for timely filing of contentions on acceptance criteria being met. The NRC explained that under the draft final rule, the *Federal Register* notices required by § 52.99 are intended to provide information on acceptance criteria, in order to support interested members of the public to formulate any contentions on whether the acceptance criteria have been or will be met. Accordingly, there is no further need for NRC publication of *Federal Register* notices of ITAAC completion after the last day for filing of contentions.

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Enclosure: 1. Attendee List

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Enclosure 1

LIST OF MEETING ATTENDEES

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