NUCLEAR ENERGY INSTITUTE

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April 27, 2007

Mr. William D. Reckley
Office of New Reactors
U.S. Nuclear Regulatory Commission
Mail Stop 12 D3
Washington, DC 20555-0001

Subject: Clarification of NRC Guidance on Variances and Departures in COL Applications

Project Number: 689

Dear Mr. Reckley:

During a public workshop on Regulatory Guide 1.206, "Combined License Applications for Nuclear Power Plants," held on April 19, 2007, the industry asked a number of clarifying questions regarding the requirements to identify variances and departures related to the format of COL applications. Nuclear Energy Institute (NEI)[1] is submitting this letter on behalf of the nuclear industry to document our understanding of the discussions with NRC staff at the workshop regarding these COL issues.

Due to the evolution of Part 52 over several years, there are a number of formatting issues that have developed that will need to be addressed by some COL applicants who will be referencing certified designs or early site permits. To ensure we have a common understanding of how to address these issues, below please find a recommended path forward:

1. Requests for Variance from an ESP: Placement in COL Application and Format
   - Specific variances will be identified in the appropriate text of the application.
   - The requests for variances may be presented in the same portion (or "part") of the COL application that contains the "departure report" required by the design certification rule, Section X.B.1.
   - In that a request for variance from the ESP is generally analogous to an intended departure from the generic DCD, the format of a request for variance would generally follow that suggested in Section X.B.1. The request for variance would contain a brief

[1] NEI is the organization responsible for establishing unified industry policy on matters affecting the nuclear energy industry. NEI's members include all entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear material licensees, and other organizations and individuals involved in the nuclear energy industry.

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description of the variance from the ESP, including a summary of the analysis and justification for the variance.

2. COL applications (COLA) referencing an ESP will generally incorporate the ESP SSAR into the COLA FSAR by reference. Applicants have noted in preparing draft COLA FSAR material that certain administrative and editorial changes to the ESP SSAR may be appropriate and helpful to: (1) facilitate Staff review, (2) support clarity of the COLA FSAR to the public, and (3) facilitate the long term use of the COLA FSAR following licensing and construction when incorporated documents would likely be integrated.
   - Administrative and editorial changes would not be material in nature. Therefore, such changes would not be considered variances from the ESP.
   - The editorial changes would be identified in the appropriate locations within the COLA FSAR. It is proposed that a summary of these changes would be provided in an appropriate location within the COLA in a separate section from the variances.

3. It is understood that the addition of information in the COLA FSAR that supplements but does not conflict with the ESP SSAR is not a variance. Examples of such supplemental information include information added to address generic DCD COL information items and ESP COL action items.

4. It is understood that need for requests for variances have limited applicability to the environmental review aspects of the ESP.
   - No request for variance in environmental areas would be required unless information in the COLA ER involves deviations from the ESP terms and conditions. It is recognized that ESP terms and conditions include characteristics and parameters that may have been used in support of environmental reviews.
   - If the actual characteristics at the time of the COLA are different from but fall within the bounds of the ESP terms and conditions, there is no variance. If it is unclear whether an ESP term or condition is a bounding value rather than a specified number that must be met, any material difference would constitute a variance.
   - Information representing changes to the ESP ER are reviewed and processed in accordance with the provisions of 10 CFR 51.50(c).

5. It is recognized that the "pilot" ESP SSARs were developed considering the guidance of Reg. Guide 1.70, RS-002, and NUREG-0800 in general. Thus, the ESP SSAR formats generally follow this NRC guidance. For these reasons, the ESP SSAR's follow the format expectations of Reg. Guide 1.206. Given this alignment of the ESP SSAR's with Reg. Guide 1.206, it is appropriate that COLA FSAR Chapter 2 be formatted according to the ESP SSAR, in general. Following such a format may present conflicts of an administrative and editorial nature between a proposed COLA FSAR Chapter 2 and the applicable generic DCD. The design certification rule requires that the plant-specific DCD use "the same organization and numbering as the generic DCD" (Section IV.A.2.a).
   - It is understood that making administrative and editorial changes to the generic DCD to facilitate Staff review and public use and understanding of the COLA would not be considered departures from the generic DCD. If the NRC determines such changes would require an administrative exemption form Section IV.A.2.a of the design certification rule then it is our understanding that such administrative exemptions would be readily granted by the NRC.

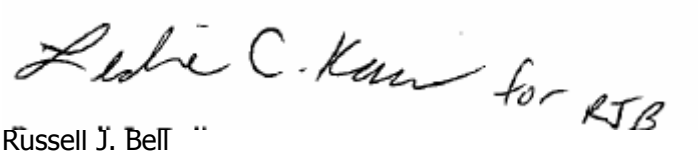
- It is understood that making administrative and editorial changes to the ESP SSAR to facilitate Staff review and public use and understanding of the COLA would not be considered a variance.

6. There may be errors (either editorial or substantive) in the ESP SSAR. The following process may be used to correct those errors:
   - Correction of editorial errors (e.g., references to the wrong figure numbers) does not require a variance.
   - Correction of substantive errors does not require a variance, provided that the error was identified and corrected during the ESP proceeding and is reflected in the hearing record.
   - Correction of substantive errors that were not identified during the ESP proceeding would constitute a variance.

7. There may be errors (either editorial or substantive) in the ESP ER or EIS. The following process will be used to correct those errors:
   - If correction of an error constitutes "new and significant information", the correction must be made in the COLA ER.
   - If the correction of an error involves a change in an ESP term or condition, the correction must be made in the COLA ER and a variance must be requested.
   - The COL applicant should notify the NRC of other errors known by the applicant. This notification could be included in the application or in a letter to the NRC during the pre-application review process. Such a correction would not constitute a variance and would not be litigable.

We appreciate your consideration of our proposed handling of these issues. Please provide a written confirmation of your agreement with these proposals including any corrections or exceptions. If you have any questions regarding this effort, please contact Leslie Kass at (202) 739-8115; lck@nei.org.

Sincerely,



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NRC Document Control Desk