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12 Commission Advisory Committee on Reactor Safeguards,
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
571ST MEETING
ADVISORY COMMITTEE ON REACTOR SAFEGUARDS (ACRS)

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FRIDAY,

APRIL 9, 2010

+ + + + +

ROCKVILLE, MARYLAND

+ + + + +

The Advisory Committee convened in Room T2B3 in the Headquarters of the Nuclear Regulatory Commission, Two White Flint North, 11545 Rockville Pike, at 8:30 a.m., DR. SAID ABDEL-KHALIK, Chair, presiding.

MEMBERS PRESENT:

SAID ABDEL-KHALIK, Chair

J. SAM ARMIJO, Vice Chair

JOHN W. STETKAR, Member-at-Large

SANJOY BANERJEE

DENNIS C. BLEY

MARIO V. BONACA

CHARLES H. BROWN, JR.

MICHAEL CORRADINI

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MEMBERS PRESENT (Continued):

DANA A. POWERS

HAROLD B. RAY

MICHAEL T. RYAN

WILLIAM J. SHACK

JOHN D. SIEBER

NRC STAFF PRESENT:

EARL LIBBY

JERRY WILSON

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P-R-O-C-E-E-D-I-N-G-S

(8:28 a.m.)

6) OPENING REMARKS BY THE ACRS CHAIRMAN

CHAIR ABDEL-KHALIK: The meeting will now come to order. This is the second day of the 571st meeting of the Advisory Committee on Reactor Safeguards.

During today's meeting, the Committee will consider the following: one, final interim staff guidance ESP/DC/COL-ISG-015, "Post-Combined License Commitments"; two, future ACRS activities/report of the Planning and Procedures Subcommittee; and, three, preparation of ACRS reports.

This meeting is being conducted in accordance with the provisions of the Federal Advisory Committee Act. Dr. Antonio Diaz is the designated federal official for the initial portion of the meeting.

We have received no written comments or requests for time to make oral statements from members of the public regarding today's sessions.

There will be a phone bridge line at today's meeting. And to preclude interruption of the

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1 meeting, the phone will be placed in a listen-in mode
2 during the presentations and Committee discussions.

3 A transcript of portions of the meeting
4 is being kept. And it is requested that the speakers
5 use one of the microphones, identify themselves, and
6 speak with sufficient clarity and volume so that they
7 can be readily heard.

8 At this time we will proceed to the first
9 item on today's agenda. And Dr. Bley will lead us
10 through that item.

11 MEMBER BLEY: Thank you, Mr. Chairman.

12 7) FINAL ISG ESP/DC/COL-ISG-015,

13 "POST-COMBINED LICENSE COMMITMENTS"

14 7.1) REMARKS BY THE SUBCOMMITTEE CHAIRMAN

15 MEMBER BLEY: I am Dennis Bley. The
16 purpose of this session is to hear a presentation
17 from the staff regarding the ISG-015, "Post-Combined
18 License Commitments."

19 The ISG was prepared to supplement the
20 guidance provided to the NRC staff in section 1 in
21 production and interfaces of the standard review
22 plan. And it concerns the review of applications to
23 support early site permits, design certification,
24 combined license applications.

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1 We're looking forward to this. It's
2 related to other things we have been following very
3 closely and is another way commitments can be closed.

4 So we are going to hear of several different
5 approaches.

6 And I have to admit I mixed up some of
7 the things. I read it. It sounded like DAC could be
8 closed using some of these other methods, but I will
9 learn more clearly how these things are distinguished
10 at this time.

11 I would like to welcome Mr. Earl Libby
12 back to guide us through this presentation. Thanks,
13 Earl.

14 MR. LIBBY: Thank you very much.

15 7.2) BRIEFING BY AND DISCUSSIONS WITH
16 REPRESENTATIVES OF THE NRC STAFF

17 MR. LIBBY: Good morning. The name is
18 Earl Libby. A brief synopsis, a history again,
19 senior reactor operator-licensed, two different
20 nuclear power plants. While I was working security
21 side from 2002-2008, been with the NRC for
22 approximately one and a half years.

23 Jerry, do you want to say a couple of
24 words?

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1 MR. WILSON: I need no introduction.

2 (Laughter.)

3 MEMBER POWERS: Aren't you on the staff
4 here, Jerry?

5 MEMBER BLEY: For the record, Jerry
6 Wilson is here with us again on these issues.

7 MR. LIBBY: Thanks. Thank you, Jerry.

8 All right. The purpose of interim staff
9 guidance 15, it supplements, as Dr. Bley pointed out,
10 reg guide 1.206. And there is a new attachment
11 appendix to the standard review plan on chapter 1.

12 The purpose of the guidance is on the
13 completion of action items and information items that
14 were identified within the final safety analysis
15 report for the certified design in either design cert
16 rule. And it has guidance on the completion of
17 action items and information items that are
18 identified during the review of the COL application
19 itself.

20 Again, it breaks itself into tracking of
21 the COL action items that were identified in the
22 design certification applications, tracking of the
23 action items that could not be completed until after
24 the combined license is issued, and tracking of the

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1 COL action items also identified as COL holder items
2 that could not be completed in the design
3 certification side until the combined license is
4 issued.

5 There has been a term bantered about,
6 "COL holder item," in a couple of the design
7 certification rules and design certifications
8 themselves. And we are no longer using that term.

9 We are trying to back it back out of the
10 majority of the documentation that is being presented
11 going forward. That is because there is not really
12 any legal basis for that term "COL holder." There is
13 either an applicant or there is a new reactor
14 licensee.

15 So "new reactor licensee" would fit in
16 there where "COL holder" is.

17 MEMBER CORRADINI: So just to make sure I
18 understand, so you are going to give us examples of
19 things that naturally would be action items or
20 information items that couldn't be finished by the
21 time of the issuance of the COL.

22 MR. LIBBY: Yes. At the end of the
23 presentation, we plan to use some examples of the --
24 it breaks into three classifications of how these

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1 items will be tracked going forward. And we can give
2 you examples of what would fit in each of those three
3 categories.

4 MEMBER CORRADINI: Okay. Thank you.

5 MR. LIBBY: Public interactions to --

6 MEMBER BLEY: May I interrupt you? In
7 reading this, I got a sense that some of the problem
8 with that COL holder language was the vendors who
9 were bringing things in for certification were
10 actually citing things that would be done by the COL
11 applicant.

12 And it was felt that wasn't really up to
13 them to do. That was really something that comes out
14 of the staff review. Am I right in that
15 understanding?

16 MR. WILSON: That is correct. It is more
17 appropriate for my license applicant to decide how
18 those items will be addressed and at what stage of
19 the process, rather than the design certification
20 applicant.

21 MEMBER BLEY: Okay.

22 MR. LIBBY: And, just a little bit of
23 background you may want, how did we come up with this
24 stuff? You would have to think of it in the context

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1 of design certification.

2 First of all, it's just reviewing the
3 design. So all of these other aspects that you need
4 for a license, such as operational programs, aren't
5 resolved in design certification space. Also, design
6 certification is not a complete scope. Some portions
7 of the design are left for the combined license
8 review.

9 So what happens is that as the reviewer
10 is reviewing something, as we all know, he can't
11 separate an operational issue completely from the
12 design issue. You're reviewing your residual heat
13 removal system. You look at the system. You
14 conclude that it has all it needs. But you
15 understand I want to be sure there is a restriction
16 on the temperament of the water source so I know the
17 system is going to work right.

18 Well, you leave a little pointer to the
19 reviewer who is coming along behind you. When you
20 pick it up at the COL stage, design looks fine, but
21 be sure you get this operational restriction put in
22 there so it will all work right.

23 So that is the origin of the concept of
24 the COL action.

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1 MEMBER CORRADINI: So, as Dennis
2 described it, I guess I have only one example in my
3 mind that I have been doing all of this with. As
4 Dennis describes it, the staff would through the RAI
5 process decide which things are action items or
6 information times that pass through versus things
7 that they want resolved as RAIs in the --

8 MR. WILSON: Unfortunately, it wasn't
9 that simple. So at the design cert stage, just
10 deciding these are passed down, they need to be
11 looked at at the next stage.

12 MEMBER CORRADINI: Okay.

13 MR. WILSON: Now we're at the next stage
14 and now --

15 MEMBER CORRADINI: At the COL?

16 MR. WILSON: Yes. And, like anything
17 else in life, once you create something, it tends to
18 be popular. You know, the train is moving down the
19 station. And everybody starts throwing stuff on
20 board. So we have a whole bunch of these things now.

21 And now we're at the license stage. And
22 we're looking at them more carefully. And the
23 applicants are saying, "Well, I can address this.
24 And here is how we resolve it."

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1 And I have to wait until the plant is
2 under construction and I know some mass build
3 information so that I can actually -- we're going to
4 have to pass that off. And so we're trying to find
5 ways of how we deal with that pass-off. And that is
6 what Earl is going to be talking about.

7 MEMBER CORRADINI: Thank you.

8 MR. LIBBY: Do you want to bring up the
9 question of timing also or not?

10 MEMBER CORRADINI: No.

11 MR. LIBBY: Public interactions to get to
12 this point, there are several design center working
13 group meetings that are held over in the middle and
14 end of 2009.

15 It went out for public comment earlier.
16 And during that public comment period at the end of
17 2009, we did have one design center working group
18 meeting to work on some of the comments that they
19 had.

20 NEI did come back with comments. And in
21 December of last year, we had a design center working
22 group meeting to address those comments. And the
23 final interim staff guidance was issued on January
24 21st of this year.

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1 Fuel applicants must demonstrate
2 compliance with all the regulatory requirements prior
3 to receiving a license. They're contained in 52.79
4 and .80, .79 and '80.

5 So applicants must provide all
6 information required in the referenced design
7 certification rule. This is where we have already
8 done the design certification. Now we're at the COL
9 stage.

10 And some of those things that Jerry was
11 referring to, they're being brought forward from the
12 design cert to the COL. They're contained within
13 part 52, the applicable appendix, and then sections
14 IV.A. And specifically the COL holder items and
15 information action items are contained within the
16 appendix section IV.A.2.e

17 Irrespective of that, the COL applicant
18 must provide all information that is necessary for
19 the Commission to make a finding required to issue a
20 license under part 52.97(a). You have to meet all
21 the regulations. Even though we have information
22 items that we're going to carry forward and keep
23 track of, you still have to meet those.

24 So what are these things? Post-combined

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1 license commitment information, that was not
2 necessary to make a licensing decision. And it is
3 information that the applicant has committed to
4 provide to the NRC at some point in the future.

5 Where do these commitments or questions
6 come from? In the design certification itself, as
7 Jerry has already brought up, from the early site
8 permit if the COL references the early site permit,
9 that there is additional information in that
10 particular document that has to be carried forward,
11 or if during the review of the COL application
12 itself, additional items come up, they have to be
13 addressed and gives rise to these post-combined
14 license commitments.

15 So how do we keep track of them? How do
16 we get them done? Three methods are laid out in the
17 interim staff guidance. It's either an ITAAC,
18 inspection test analysis acceptance criteria or it is
19 a license condition or it's an information commitment
20 to be provided within a licensing basis document or
21 the FSAR as it is updated on a periodic basis.

22 FSAR updates are annual until they get to
23 the 103(g) finding and we start to get into fuel load
24 and testing and whatnot that goes along with the

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1 initial stuff.

2 MEMBER CORRADINI: Can you repeat that
3 part again? I'm sorry. You said that? The few
4 sentences. I didn't appreciate what you meant there.

5 MR. LIBBY: There are three ways of --

6 MEMBER CORRADINI: Yes.

7 MR. LIBBY: The last one is a commitment
8 to update the FSAR.

9 MEMBER CORRADINI: Then you said
10 something about timing pre and post-fuel load that I
11 didn't understand.

12 MR. LIBBY: There are different FSAR
13 update criteria or time frames for a licensee prior
14 to the 103(g) finding. And, Jerry, correct me when I
15 mess this up. It's on an annual basis.

16 MEMBER CORRADINI: Okay.

17 MR. LIBBY: It's a frequency annual to
18 two years depending upon the fuel reload cycle.

19 MEMBER CORRADINI: All right. Thank you.

20 MR. LIBBY: Okay.

21 MEMBER BLEY: Let me ask you a question.

22 Is it possible or has it ever come up so far that
23 some of the things that in the design cert were
24 tagged as ITAAC or DAC ITAAC end up in the COL stage

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1 growing into one of the other two categories for some
2 reason?

3 MR. WILSON: That should not happen if we
4 -- and I'm including the Advisory Committee -- made a
5 good decision on the ITAAC at the design cert stage,
6 then they should hold throughout the combined license
7 review. We haven't seen that happen that way.

8 MEMBER RAY: Let me just try and say that
9 to me there is a tension here that underlies all of
10 this, which is the objective of -- any of us who have
11 been here at a part 50 license know that there is a
12 decision point at the end when a lot of this
13 information is no longer uncertain but is known.

14 In order to get away from that
15 uncertainty, we went to part 52. Now the real
16 question is, how much uncertainty is associated with
17 these items? And, more importantly in my mind, how
18 does that uncertainty get resolved?

19 I mean, it's one thing to say you've got
20 to give us information. The real issue is, what am I
21 going to do with it? And if I say, "Stop. Don't
22 load fuel because I don't like the information you
23 just gave me," is that really a viable possibility?

24 And things like SERs or stuff like that

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1 are what are going through my mind. It's not a
2 matter of tracking. It's a question of "Okay. How I
3 finally gave you the information. What are you going
4 to do with it?"

5 So if you can somehow address that, right
6 now we're binning them into these different
7 categories. And we're making sure we get the
8 information and all that kind of stuff. But the real
9 question is, what are you going to do with it?

10 MEMBER CORRADINI: Well, can I ask the
11 question a little bit differently? Because I guess I
12 assume something and Harold does not. I just assumed
13 that none of these were showstoppers.

14 MEMBER RAY: Well, you can't tell that,
15 Mike. I mean --

16 MEMBER CORRADINI: Okay.

17 MEMBER RAY: -- that's what I guess I
18 didn't appreciate. I thought these were things that
19 were good to have but not something that would
20 essentially hold up the licensing decision.

21 MEMBER CORRADINI: Not true. You can't
22 know that.

23 MR. WILSON: Yes. Quickly --

24 MEMBER SIEBER: Somebody has to sign off.

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1 MR. WILSON: Earl is going to get to
2 this, I believe, a little later in the presentation.

3 It goes quickly. depends on which category puts into
4 it. It's an ITAAC. All ITAAC have to be resolved
5 before you get authorization to operate.

6 MEMBER SIEBER: Right.

7 MR. WILSON: So that's clearly --

8 MEMBER RAY: And you know we are
9 concerned about how you do that, right, --

10 MR. WILSON: Yes.

11 MEMBER RAY: Particularly if it's DAC?

12 MR. WILSON: Yes.

13 MEMBER RAY: Okay.

14 MR. WILSON: Second category, license
15 condition. License conditions also have a high level
16 of importance. They need to be dealt with.

17 MEMBER RAY: You had better believe it.

18 MR. WILSON: And the timing will be
19 specified as we specify the license condition. And
20 I'm working on those right now.

21 The FSAR commitments are at a lower
22 threshold. They can be resolved in a number of ways.

23 They're not showstoppers. So we have to make this
24 judgment. Is that important enough to move up to a

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1 license condition or can it --

2 MEMBER RAY: Maybe an FSAR information
3 item can be a surprise that you didn't anticipate.
4 So I'm just trying to not get you to answer the
5 question, really, but to understand that the real
6 interest isn't in how, what buckets we put these
7 things in but it's what do you do with it when you
8 finally get the information.

9 And is that going to be claimed as you
10 are undermining part 52. This is no longer the
11 certainty that we said we could count on and yadda
12 yadda yadda yadda? That is the problem.

13 MEMBER SIEBER: Some place along the
14 line, just to follow on with what Harold was saying,
15 the licensee has to know that the information that he
16 supplies is received, accepted, and approved.
17 Otherwise you're in a quandary.

18 MEMBER RAY: Yes. You might go a year
19 after you put something and, all of a sudden, they
20 say it's no good.

21 MEMBER SIEBER: Right.

22 MR. WILSON: And as part of the review
23 leading up to the issuance of the combined license,
24 the applicant and the staff need to work out what is

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1 acceptable information to deal with a particular
2 item.

3 MEMBER RAY: Yes. And I think that is
4 what we are mostly interested in, how does that
5 really happen? And, like Jack said, could you send
6 something in and then sit there for a year dumping
7 money in the plant and, all of a sudden, then find
8 out that wasn't the right answer?

9 MEMBER SIEBER: Yes.

10 MR. WILSON: And we're certainly trying
11 to minimize that.

12 MEMBER BLEY: Go ahead, Earl.

13 MR. LIBBY: The purpose of the ISG is to
14 not only track but also to complete the three items.
15 So we'll try to get into that a little bit.

16 At the tracking completion with the
17 post-license commitments with ITAAC itself, the
18 successful completion of ITAAC provides reasonable
19 assurance that solely has been constructed to operate
20 in conformance with the combined license bridging the
21 act of the Commission's role and regulations. That's
22 the part 10 CFR 52.99, which then is the ITAAC
23 completion and maintenance, which then drives you to
24 the 103(g) finding.

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1 Jack, I don't want to dominate this here,
2 but to Jack's point, will you know when it's signed
3 off, --

4 MEMBER SIEBER: Yes.

5 MR. LIBBY: -- the ITAAC inspection
6 program as well as the DAC inspection, part of the
7 ITAAC inspection program is in to work. They are
8 physically doing that now. They're working on it.

9 MEMBER BLEY: For the Committee, I would
10 ask -- there was really no connection between this
11 ISG and the working group on DAC closure that's going
12 on. That's separate except as it fits into this
13 framework.

14 MEMBER RAY: That is important.

15 MR. LIBBY: The other bin is the tracking
16 and completion of post-license commitments with the
17 license conditions, somewhat the stuff that is
18 contained in 50.54. License conditions may be
19 proposed by the applicants or by NRC staff. And they
20 remain in effect until they are satisfactorily
21 completed.

22 And removal is authorized by the license
23 amendment process under the 52.98(f) and the 50.90
24 process. Again, that goes to the completion of the

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1 license condition.

2 FSAR commitments are tracking completion,
3 provide the information, updated information, within
4 the FSAR or the other licensing basis documents.
5 And, as Jerry pointed out earlier, this is kind of
6 like a lower threshold, lower threshold, to get
7 across this one.

8 Documents considered appropriate to
9 ensure the licensing basis for the facility are
10 current, addressing the plant change and
11 modifications, going through construction and into
12 early operation, and specific design basis
13 information update on a recurring basis under the
14 FSAR update statement.

15 MEMBER BLEY: Before we do this, I want
16 to go back to Jerry's comment that this is a lower
17 threshold. It seems to me it's a lower threshold in
18 the sense that the timing of it might come at a later
19 point in time. However, I would think FSAR changes
20 that would be submitted would go through the normal
21 review process here at headquarters so that --

22 MR. WILSON: You might look at it a
23 different way, though.

24 MEMBER BLEY: I'm sorry? Yes. Go ahead.

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1 MR. WILSON: We have issued the license
2 in these items.

3 MEMBER BLEY: Right.

4 MR. WILSON: We had one example that
5 happens to be a license condition. Another example
6 happens to be an FSAR commitment. That license
7 condition can only be resolved by the licensee with
8 the license amendment action pre-approval. FSAR
9 commitment, the licensee may 50.59 it away. We may
10 not even realize how it was dispensed with --

11 MEMBER BLEY: Oh, is that right? Okay.

12 MR. WILSON: -- until sometime afterward
13 when we look at those summary reports. I don't mind
14 telling you that our management, interim management,
15 we met with them on this, of course. They're very
16 sensitive to that point. Their tendency is we like
17 more license conditions and fewer FSAR commitments.
18 That's the reality --

19 MEMBER BLEY: Certainly on track with the
20 others --

21 MR. WILSON: -- no matter what they're
22 working in right now. That's where we're getting
23 pushed. And so that is the significant difference.

24 MEMBER BLEY: Thank you.

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1 MEMBER RAY: Yes. And that is well put

2 MR. LIBBY: Okay. Just a summary. If
3 you've got any additional questions as to how it gets
4 into the different bins, we can address some examples
5 of what goes into each of them and then tracking and
6 competition of those and the tracking and completion
7 of those particular items.

8 MEMBER CORRADINI: Examples would be
9 good, but since you volunteered timing, let's talk
10 about some possible timing. So I want to understand
11 this from a timing standpoint.

12 So some unknown certification may be done
13 by the end of this calendar year, for example, right?

14 And that certification will have -- now, all of its
15 open items will be closed. But there will be a
16 series of -- how can I get this right? -- action
17 items. I can't use the word "holder" -- action items
18 or information items that pass on to the COL.

19 Some COL is submitted and hopefully is
20 completed. In that process, some will be closed.
21 And others will pass through. The COL is issued.
22 And then there is a series of information items and
23 action items and ITAACs.

24 And many of those things that are still

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1 held out will fall into the ITAAC bin. Some will
2 fall in the license condition bin and in this other
3 bin. And you will know that coming out of the COL
4 issuance?

5 MR. WILSON: Yes. There won't be any
6 action items or information items anymore. They will
7 be in one of these three bins.

8 MEMBER RAY: Ah. Okay.

9 MEMBER CORRADINI: Okay.

10 MEMBER BLEY: All information items.

11 MEMBER CORRADINI: All information will
12 be binned somehow.

13 Okay. And now let's pick one. Digital
14 I&C. That's a good one. And there is some level of
15 specificity that was given at the certification
16 phase. You guys were happy. We thought we were
17 happen. We coped past the COL. You are happy. And
18 now more details have to be given.

19 When the licensee, the utility, or the
20 licensee brings in more information at this point, to
21 get to Harold's question, do you guys have a target
22 response time on these things or is it so
23 wide-ranging you get to it when you get to it?
24 That's what I am still struggling with here. Because

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1 if I was issued the COL and in theory something gets
2 built in five years, what is the timing in that zone?

3 Have you thought about that?

4 MR. WILSON: Let me try to answer that in
5 the general case, and then I will come to the DAC
6 case. In the general case, the licensee is
7 controlling the timing. They're constructing the
8 plant. They're creating the closure reports and all
9 of these ITAACs. Their only obligation is to have
10 them all resolved before they get authorization to
11 operate.

12 While we may believe it is in their best
13 interest to do this early, I mean, it's really their
14 judgment. So the timing is pretty much controlled by
15 them. It's when the closure reports are going to get
16 to.

17 Where our Division of Construction and
18 Inspection Program is working on these so-called
19 turn-around times right now --

20 MEMBER CORRADINI: And that is the
21 separate task force you were talking about?

22 MR. WILSON: Well, they have their own
23 work --

24 MEMBER CORRADINI: Okay.

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1 MR. WILSON: But, anyway, they're getting
2 at that issue. Also, this is affected by DOE Standby
3 Support Program. And so we're working at the
4 Department of Energy on that also.

5 Do you understand risk insurance? There
6 is a risk insurance policy that is out there that DOE
7 has offered that comes out of the Energy Policy Act
8 of 2005.

9 MEMBER CORRADINI: Oh, okay. Okay.

10 MR. WILSON: This all rolls into that
11 same issue of these ITAAC closures. Is there a delay
12 caused by the regulator that causes a slip in the
13 authorization to operate past the time when they
14 could have been into operation. I'm not going to get
15 into the details of that, but basically that is the
16 concept.

17 So we are looking at what is a reasonable
18 time period for us to resolve these ITAAC closure
19 letters that come in? And not all ITAAC are created
20 equal. Some are going to be relatively easy, and
21 some are going to be difficult. You keep bringing up
22 with me the difficult one.

23 MEMBER CORRADINI: I'm sorry.

24 MR. WILSON: Nonetheless, so we're

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1 working on that and working with Region II and
2 figuring out how we're going to deal with all of
3 that.

4 Now comes design acceptance criteria,
5 which is kind of part ITAAC. There is a design phase
6 and then the as-built verification phase. The design
7 phase, we want them to get that in fairly quickly
8 because we all recognize it is going to take some
9 time. And we don't want that to be happening at the
10 back end.

11 ITAAC all fit into the famous 80/20 rule.

12 We expect 80 percent of the ITAAC to be completed in
13 the last 20 percent of construction. So on your
14 five-year schedule, that is the last year, 80
15 percent. We're dealing with close to 1,000 ITAAC.
16 So you can see what the problem is we are facing. We
17 want that part to come in sooner so that we can deal
18 with that and move on.

19 Now, the last part -- and you see here
20 Earl's bullet, 50.71(e). Once they have resolved
21 that design information, we expect in their next FSAR
22 update, they will take the FSAR level of information
23 from that resolution and put it in the FSAR and fill
24 that out.

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1 MEMBER RAY: Yes, but they can get a
2 quick answer that's no. And then the question is, is
3 this a regulatory delay or not? Okay. It's
4 incumbent on you to satisfy a DAC, and you say, "No.
5 This doesn't satisfy it. I'm done. I'm at my time
6 line."

7 The applicant can still say, "Oh, my God.
8 I'm facing a regulatory delay. Pay me." And all
9 this kind of controversy is yet to come, but it's
10 going to put tremendous pressure on all of us, staff
11 mostly but on us as well.

12 I just think we all ought to understand
13 that it's more than just some grouching in the trade
14 press about being held up. It gets to be really a
15 big, big deal. And that is why I have used the
16 analogy of contracts as the real example of what a
17 DAC has to be. It's got to be so damned airtight
18 that when you say, "No," you've got a good reason to
19 say no and you're not into some big squabble on the
20 18th floor here.

21 MEMBER STETKAR: Jerry, I hear what
22 you're saying. And the agency has made it clear
23 that, especially in the area of DAC, you want
24 information as quickly as possible. You want closure

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1 as quickly as possible.

2 We're dealing with a situation where all
3 of those words have been said, that you would really
4 prefer to get the vast majority of the DAC closed at
5 the COL stage so it's not passed through. The COL
6 applicant who has just passed it straight through,
7 they haven't heard those words that you're saying to
8 us.

9 So there's apparently a strategy to
10 ignore those words. I don't know -- there's
11 apparently a strategy --

12 MEMBER RAY: Well, yes, but --

13 MEMBER STETKAR: -- to ignore those
14 words.

15 MEMBER RAY: They hear the words. They
16 understand the words. That's not the problem, I
17 don't think. It's that there's a consequence that
18 they choose to defer something for good reason from
19 their standpoint. I don't think it's a
20 miscommunication. I just think there's attention.

21 MEMBER STETKAR: No. That's my point.
22 There's apparently a strategy that, regardless of
23 what you're saying orally about we really want these
24 things, we really want these things. Apparently

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1 they're hearing that, but they've decided that they
2 don't really want to give you things early, for good
3 reason.

4 MR. WILSON: We are early in implementing
5 this stuff. And, to be fair to the regulated
6 industry, they're figuring this out, too. And also
7 within them, there are disputes.

8 I have been in meetings where I've had
9 the design certification applicant sitting next to
10 the combined license applicant and I'm bringing up
11 "So how many DAC are you going to have? And the
12 design cert applicant rattles off bing, bing, bing,
13 bing bing. And then the COL applicant loots at him,
14 and he says, "I don't want to hate the" --

15 (Laughter.)

16 MEMBER STETKAR: We've had a presentation
17 like that, where the COL applicant basically said,
18 "We don't want to pass through DAC." And then the
19 next meeting, they said, "Yes. We are going to pass
20 through those DAC."

21 MEMBER RAY: Well, I think it is
22 sufficient just to observe that this is a really
23 tough issue that we have got to try and weigh on now
24 when we can.

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1 MEMBER STETKAR: You are right, Harold,
2 because all we're hearing is, well, okay. We have a
3 process now that will get to it later again.

4 MEMBER BLEY: Were there more issues on
5 timing you wanted to get into, Mike?

6 MEMBER CORRADINI: No. I was going to
7 take up their offer of examples unless you don't want
8 to.

9 MEMBER BLEY: I want to do that. And if
10 there is time at the end after we do some examples,
11 maybe the rest of the Committee doesn't need it, but
12 a little briefing on the DOE insurance stuff would be
13 of great interest to me because I'm not fully versed,
14 even slightly versed, in that issue. I know Harold
15 has got it down pat, but he has reason to.

16 So if you would go to some examples, Earl
17 or Jerry or whoever wants to?

18 MR. WILSON: While Earl is getting at
19 this, we do have examples in the guidance. And also,
20 just to be sure everyone is clear, this guidance may
21 seem a little bit confusing because it's written
22 leading up to how we're going to implement it in the
23 reg guide and the standard review plan. So both of
24 those are in here and they are reviewed.

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1 MEMBER CORRADINI: Well, you have given
2 us a couple of existing in the discussion. You used
3 --

4 MR. LIBBY: We used the intake cooling
5 water temperature as a constraint on the RHR heat
6 exchanger through the intake cooling water system
7 itself as one piece of information that would be
8 required for ITAAC essentially that we drug forward
9 but was not known at the time of the design
10 certification. The other one --

11 MEMBER BROWN: I guess that is one when
12 you brought it up I did not understand. I mean, here
13 I've got an RHR system in the design cert stage.

14 MR. LIBBY: That is correct.

15 MEMBER BROWN: And the design
16 certification --

17 MR. LIBBY: That is correct.

18 MEMBER BROWN: -- is telling you, "Here
19 is an RHR system." And one of the input conditions
20 for getting RHR to work properly should be what is
21 the temperature of the input water. Why in the world
22 does that not get resolved until five years later? I
23 mean, the number ought to be in the design cert
24 stage.

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1 MR. LIBBY: In a design cert stage, the
2 supporting systems', interfacing systems', intake
3 cooling water might pack different system
4 characteristics based upon the length of the pipe,
5 the physical depth of the pump intake cooling water.

6 MEMBER BROWN: It's going to remove heat.
7 It's got that final point where it's going to go
8 off. The temperature into whatever the heat
9 exchanger is has got to be less than or equal to some
10 number in order to adequately remove cooling from the
11 rest of the system.

12 MR. WILSON: The design cert applicant
13 can specify the interface requirement. The combined
14 license applicant has to demonstrate they meet that
15 interface requirement.

16 MR. LIBBY: Okay? The system
17 characteristics on intake cooling water system will
18 probably be different based upon the location, the
19 physical location, of the site and the length of the
20 piping.

21 MEMBER BROWN: Okay. So I've just got a
22 location issue.

23 MEMBER CORRADINI: But I think the way
24 they're answering your question is, at least on this

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1 one, this one I thought I felt good about, which is
2 it's a 20 C or less than 20 C.

3 MEMBER BROWN: After input to the heat --

4 MEMBER CORRADINI: Right. And what
5 they're saying is the COL person then would have
6 essentially a -- I can't remember these names -- I
7 assume an action item that then has to demonstrate
8 that when they put the plant where they're going to
9 put it and they designed the system that they
10 designed, it has to meet the less than or equal to 20
11 degrees.

12 MEMBER BROWN: So they're sucking water
13 out of a river or out of a cooling pond or from a
14 cooling tower or whatever. It's got to go through
15 the pipes, et cetera, before you get to that point -

16 MR. LIBBY: That is correct.

17 MEMBER BROWN: -- and back to the
18 licensee, the siting.

19 MR. LIBBY: The applicant would have to
20 solve that question. In part and parcel with that is
21 the elevation of the water, how deep is the water,
22 what is the head above the pump itself.

23 MEMBER CORRADINI: Since this is an easy
24 example, let me ask one last question, then. So is

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1 it the way that these plants are being built and
2 designed such that they wouldn't know that answer
3 before you issued the COL?

4 That is what in this simple example kind
5 of surprises me. I would think they would know
6 enough about the design going into the issuance of
7 the license that they wouldn't pass this one through
8 as an information item after you give them the
9 license.

10 But am I misunderstanding the
11 possibilities here?

12 MR. LIBBY: The information item is an
13 example of one that comes from the design
14 certification itself and is resolved as an ITAAC.
15 Okay? It started off as an information item. The
16 COL resolved it prior to the issuance of the license
17 as an ITAAC item that will be verified going forward.

18 MEMBER CORRADINI: Okay.

19 MR. LIBBY: But no, that doesn't keep
20 going.

21 MEMBER CORRADINI: Okay. So if they have
22 enough of the design squared away, --

23 MR. LIBBY: Correct.

24 MEMBER CORRADINI: -- they may close it

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1 up. It may not pass through the license.

2 MR. LIBBY: Pass through?

3 MEMBER CORRADINI: It wouldn't be in your
4 system if they knew enough about the design that they
5 could specify what the design --

6 MR. LIBBY: It isn't in the system. It
7 is now an ITAAC.

8 MEMBER STETKAR: They still have to
9 verify that the temperature there is --

10 MEMBER CORRADINI: That's correct.

11 MR. WILSON: So here's how I am going to
12 meet that. I am going to do X, Y, and Z. And we
13 say, "That's nice, but we would like to verify Z."

14 MEMBER CORRADINI: Okay.

15 MR. WILSON: And that ended up being --

16 MEMBER CORRADINI: I apologize. That's
17 all.

18 MR. LIBBY: Let's work on one for license
19 commitment. How about the study using the one that's
20 in there? Operational programs going forward, you
21 have the program itself, which you are putting the
22 program into a green field. So you need an
23 implementation schedule.

24 A license condition won't be such that an

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1 emergency plan or emergency program or some other
2 program, operational program, will be operational and
3 tested prior to getting to a point going into the
4 52.103(g) finding. That would be a license condition
5 that we have to have the emergency program up and
6 running two years prior to the 103(g) finding.

7 And then within that two-year period, it
8 has to be a full-blown FEMA drill. And if that
9 full-blown FEMA drill that is done within that
10 two-year period is greater than one year from the
11 time that you're physically loading fuel, you then
12 have to do another exercise that is not a full-blown
13 FEMA drill.

14 That would be an example of a license
15 condition that is based upon a schedule, that is
16 based upon an operational program that you can't do
17 prior to getting the license itself. That is an
18 example of a license condition.

19 I will let you do the FSAR. Jerry has
20 already brought up an FSAR type of thing. When you
21 have the deck and it gets resolved with the
22 inspection that is done in conjunction with the
23 attachment that comes from headquarters here, once
24 that ITAAC is completed, we now know that the system

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1 looks like, the component parts.

2 The component parts that are part of the
3 digital I&C system, the system layout then would go
4 or could go to the FSAR. And that would be carried
5 in the update to the FSAR the next time it rolls in.

6 So that is an example of that one carrying forward.

7 MEMBER BLEY: I think if you or Jerry
8 would give us a little background on the DOE
9 insurance --

10 MR. WILSON: As I was saying, Congress
11 passed a provision, Energy Policy Act of 2005, saying
12 that we're going to offer up what, simply stated, is
13 kind of a risk insurance policy. Department of
14 Energy has responsibility for that. They implemented
15 that statutory requirement into their regulations and
16 have what is known as the standby support program now
17 that applicants for combined licenses can apply for.

18 And the simple way of saying it is that
19 if there is a delay caused by the regulator, NRC, or
20 the hearing that prevents the licensee from coming to
21 power -- we got into quite a negotiation on that.
22 And I believe the power level is when you first turn
23 on the turbine generator.

24 So we're talking 30-40 percent, something

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1 like that. Then they're eligible for compensation up
2 to a certain level. And there is a whole intricate
3 process about how they apply for that payment and
4 qualify for disputes and all of that stuff, which I
5 won't get into.

6 Now, the critical thing, though, is, is
7 the delay in resolving a particular ITAAC directly
8 related to the fact that they were delayed in getting
9 to 30 percent power.

10 Well, you recognize there are a whole lot
11 of things going on out there, all sorts of
12 construction problems that are the responsibility of
13 the licensee, not the responsibility of the NRC. So
14 they not only have to demonstrate that there was a
15 delay but also that this delay related to the
16 eventual delay when we went onto the grid.

17 Now, in order to get down to the contract
18 that Mr. Ray is pointing out, you needed to have some
19 time frames. So the way the regulations are written
20 is NRC is asked to come up with time periods in which
21 we are going to get these ITAAC done. If we don't
22 come forward with them, DOE is going to write them
23 in. That is the way the regulation works.

24 MEMBER BLEY: Say that one again so I

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1 really understand this.

2 MR. WILSON: I keep reminding Mr. Tracy
3 of this, the obligation that he has. We get to pick
4 the time periods it's going to take us to resolve
5 these. And that will be part of these contracts,
6 that if we don't come up with them, then DOE is going
7 to come up with them.

8 MEMBER BROWN: They'll provide the
9 windows within which --

10 MR. WILSON: Yes. Right.

11 MEMBER BROWN: -- these have to be
12 adjudicated.

13 MR. WILSON: Right. And they told us
14 they don't want to do it. And I've told them, "We're
15 going to do it, but that's the way it's" --

16 MEMBER RAY: Jerry, how have you dealt
17 with the issue of if the answer is no? Is it
18 resolved then? The answer is no, and there is no
19 further delay?

20 MEMBER BLEY: They'll give you something
21 with the process?

22 MR. WILSON: If the applicant doesn't
23 meet the regulations, then that is their
24 responsibility.

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1 MEMBER RAY: Yes. Well --

2 MR. WILSON: That is the critical gray
3 area.

4 MEMBER RAY: Not meeting the regulations
5 becomes the --

6 MR. WILSON: I didn't say it was easy.

7 MEMBER RAY: Yes. I know. Okay.

8 MEMBER BROWN: What about when they're
9 fuzzy? That's what you're going to run into.

10 MEMBER RAY: They're always --

11 MEMBER CORRADINI: They're always fuzzy.

12 MEMBER RAY: I know. Well, he says if
13 you don't meet the regulation, you can show you don't
14 meet the regulation. But all the discussion I have
15 heard relative to the I&C is you've got these fuzzy
16 requirements. You've got to have independence, but
17 the definition of independence varies in the eye of
18 the beholder.

19 MR. WILSON: This whole concept was
20 written with traditional ITAAC in mind.

21 MEMBER BROWN: Not these.

22 MR. WILSON: Remember, DAC is the outlier
23 here.

24 MEMBER BROWN: Yes, we do. We know that.

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1 MEMBER BLEY: So this kind of detail
2 probably wasn't in the Energy Policy Act. This is
3 some agreement beyond that?

4 MR. WILSON: The Department of Energy has
5 to implement any statutory requirement. So they work
6 out the details. That was their job. And so --

7 MEMBER BLEY: Is that written in the
8 regulation or something?

9 MR. WILSON: There is a regulation. I
10 can't remember the number anymore.

11 MEMBER BLEY: Okay.

12 MR. WILSON: But there is. I could get
13 it for you if you want. And it is on the books now.
14 And they're looking for applicants to apply for it.
15 Interesting thing -- and Mr. Ray could probably help
16 out on this better than I could -- there is a number
17 of programs out there that these licensees have.

18 And it's interesting which one is going
19 to be of most value to them. So there's standby
20 support. There's the production tax credit. There's
21 the loan guaranty program.

22 So imagine you're all executives out
23 there and you're sorting through this. And which one
24 am I going to apply for or all three? And as time

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1 goes by and I talk to them, I get they're wavering.

2 So it's been interesting to see how it
3 all sorts out and what is really the valuable one and
4 who is going for what.

5 MEMBER RAY: I always thought when I was
6 on the other side that the definition of delay was
7 going to be a -- that's why I brought it up.

8 MR. WILSON: Yes.

9 MEMBER RAY: How do you decide? Is it my
10 fault because I submitted something stupid or was it
11 the regulator's fault because he just drug his feet
12 and didn't get his job done?

13 MR. WILSON: I can tell you what the
14 official position of the NRC is, the highest-level
15 management. I've been in the meeting. And the
16 position is we will not be the delay.

17 MEMBER BROWN: Who? We?

18 MR. WILSON: NRC.

19 MEMBER RAY: In other words, they will
20 say no. I'll tell you, I mean, Jerry, I have dealt
21 with this for 30-plus years. Okay? When you're
22 building ships in a shipyard, they're required to
23 submit tons of design information in order to satisfy
24 the requirements for the systems in the ships.

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1 And when we went back and said, "No,"
2 that raised all kinds of -- they actually sent
3 letters back that said, "Hold it. We gave you the
4 information, and you didn't approve it. You're
5 supposed to approve it. And then it's incumbent upon
6 you to very clearly define and show that you were
7 allowed to disapprove it."

8 And that is very, very contentious. And
9 it's just painful. It is so painful I am glad I
10 retired.

11 (Laughter.)

12 MEMBER SIEBER: I think both the staff
13 and the licensees or applicants have a responsibility
14 in expediting the process. And, you know, if you
15 mail something in and then sit back with your arms
16 folded expecting the staff to respond, I think that
17 you are taking a huge gamble.

18 When we built plants, we established an
19 office. You were down in the Phillips Building or
20 downtown at the time. We established offices. There
21 was daily communications. Everybody knew what was
22 going on.

23 MEMBER RAY: You are right, Jack. The
24 part 50 process was exactly like you say.

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1 MEMBER SIEBER: That's right.

2 MEMBER RAY: I want to get this cleared
3 soon, not later. The difference now, though, is
4 you've got this additional club of you promised me
5 certainty, and now I don't have certainty.

6 MEMBER SIEBER: Yes.

7 MEMBER RAY: And that's the difference
8 that I see here. And how is the agency going to deal
9 with it is the dilemma.

10 MEMBER BLEY: The other side is you
11 promised me a design.

12 MR. WILSON: The other point is, just as
13 Jack is saying, we're trying to get ready for this.
14 So we're working with the industry. We want to know
15 when you're going to complete these.

16 And so we have a requirement they're
17 supposed to give us their schedule. So our
18 inspectors are out there ready to inspect those
19 systems as they become completed, the ones we're
20 interested in.

21 So we're working in advance to be ready
22 so that we are going to have the inspections ready.
23 And so when the closure report comes in, we can look
24 at our inspection information. And we can say in a

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1 timely manner, "Yes. We agree that system was
2 acceptable" or not.

3 Now, the other point Mr. Ray is bandying,
4 in part 52, it wasn't certainly, but it was certainly
5 more predictability. And one of the reasons we have
6 ITAAC is that we have an agreement in advance now
7 with the industry what is going to be inspected or
8 tested or analyzed and what the acceptance criteria
9 area.

10 And that is something that we have now
11 that we didn't have previously. That is something
12 the industry asked for. We agreed. We have it now.

13 It may not be as good as some might have liked, but
14 it is different from what we had before, where the
15 inspector showed up and he didn't know who it was,
16 what he was going to look at, what the acceptance
17 criteria were going to be.

18 The industry came to me and said when I
19 was writing part 52, "We feel very vulnerable under
20 that approach. Can't we have some agreement in
21 advance? What is going to happen?" That is giving
22 them that predictability.

23 MEMBER BLEY: Yes, that is right.

24 MR. WILSON: How well it works remains to

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1 be seen, but that is how we got to where we are.

2 MEMBER BLEY: Yes. Well, thank you. And
3 thank you both.

4 I want to mention to the Committee that
5 there was no request for a letter from us. And we
6 weren't intending to write one, but if anybody feels
7 there is a reason, say so now.

8 Are there any more questions from the
9 rest of the Committee?

10 MEMBER CORRADINI: No. This is very
11 helpful, though. Thank you.

12 MEMBER SIEBER: Yes.

13 MEMBER BLEY: Gentlemen, thank you very
14 much for being here. We appreciate it. And I
15 learned quite a bit. I appreciate it.

16 Mr. Chairman, back to you.

17 CHAIR ABDEL-KHALIK: Thank you. At this
18 time, we will take a break. We will go completely
19 off the record. And we will come back at 9:30.

20 (Whereupon, the foregoing matter went off
21 the record at 9:16 a.m)

22

23

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Presentation to the ACRS Full Committee

ESP/DC/COL-ISG-015

Interim Staff Guidance

on

Post-Combined License Commitments

April 9, 2010

Jerry Wilson, Earl R. Libby

Purpose:

- Supplements RG 1.206 and provides a new appendix to SRP 1.0
- Guidance on the completion of action items and information items identified in the Final Safety Analysis Report (FSAR) for a certified design
- Guidance on the completion of action items and information items identified during review of the COL application
- Tracking of COL action item in DC applications
- Tracking of COL action items that cannot be completed until after the combined license is issued
- Tracking of COL action items, “COL holder items”, that cannot be completed until after the combined license is issued
- Term “COL holder item” is no longer in use by the Staff, the term is without legal basis



Public Interactions:

- Several Design Center Working Group meetings prior to issuing as draft for public comment
- Conducted a Design Center Working Group meeting during the public comment period
- Nuclear Energy Institute, NEI, provided comments
- December 2009 Design Center Working Group meeting to discuss resolution of the public comments received
- Issued Final ISG-15 on January 21, 2010



Regulatory Requirements for New Reactors:

- COL applicant must demonstrate compliance with all the regulatory requirements in Parts 52.79 and 52.80
- COL applicant must provide all information required in the referenced Design Certification Rule
 - (Part 52 Appendix, Section IV.A)
 - (COL action/information items, COL holder items)
 - (Part 52 Appendix, Section IV.A.2.e)
- COL applicant must provide all information that is necessary for the Commission to make the findings required to issue the license
 - (Part 52.97(a))

Overview of Requirements

- A Post-Combined License Commitment is:
 - information that was not necessary for the licensing decision
 - Information the applicant committed to provide the NRC
- A Post-Combined License Commitment arises from:
 - Design Certification – all instances of additional information required
 - Early Site Permit – all instances of additional information required
 - COL application – all instances of additional information required
- The Post-Combined License Commitment is Tracked and Completed by:
 - Inspection, Test, Analysis, and Acceptance Criteria (ITAAC)
 - A License Condition
 - Information commitment within the Final Safety Analysis Report (FSAR) or other licensing basis document

Guidance for New Reactors

- Tracking and Completion of Post-License Commitment with ITAAC
 - Successful completion of the ITAAC provides reasonable assurance the facility has been constructed and will be operated in conformity with the combined license, the provisions of the Act, and the Commission's rules and regulations
 - ITAAC MUST be completed prior to fuel load, Part 52.103(g) finding

Guidance for New Reactors

- Tracking and Completion of Post-License Commitment with License Conditions (Part 50.54)
 - License conditions may be proposed by the applicant
 - License conditions remain in effect until satisfactory completion and removal is authorized by the license amendment process (Parts 52.98(f) and 50.90)

Guidance for New Reactors

- Tracking and Completion of Post-License Commitment with FSAR Commitments (Part 50.71(e))
 - Provide updated information in the FSAR or other licensing basis documents
 - Documents considered appropriate to ensure that the licensing basis for the facility is current
 - Specific design basis information updated on a recurring basis, FSAR update schedule

Summary

- Three locations for Post-Licensing Commitments
 - Inspection, Test, Analysis, and Acceptance Criteria (ITAAC) (Part 52.99)
 - A License Condition (Part 50.54)
 - Information commitment within the Final Safety Analysis Report (FSAR) or other licensing basis document (Part 50.71(e))