NUCLEAR ENERGY INSTITUTE

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Mr. David B. Matthews
Director, Division of New Reactor Licensing
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Change Processes for New Plants

Project Number: 689

Dear Mr. Matthews:

We appreciate the NRC staff's focused efforts to clarify the process for making changes during construction under a 10 CFR Part 52 combined license (COL). This letter summarizes an industry proposal to resolve key issues highlighted in our May 19 letter to you involving changes that require NRC approval. Our purpose is to facilitate NRC staff consideration and timely feedback on the proposal as a workable and appropriate approach to resolve these issues.

Issues related to changes during construction have been discussed in NRC public meetings in July and August, as well as at the American Nuclear Society Utility Working Conference on August 9th. The relevant NRC Problem Statement for this issue, as identified in NRC public meetings, is as follows: "Determine the activities that can be performed by licensees during construction while the NRC is reviewing requested changes to the licensing basis (license amendments)." Like the NRC, the industry considers this issue a top priority. Informed by the discussions with the NRC and substantial input from our COL applicant members, NEI believes the approach outlined below would provide the flexibility licensees need to make changes to enhance the facility design and/or resolve construction issues, while also assuring that changes requiring NRC approval are thoroughly reviewed by the NRC staff and approved prior to plant operation.

The following bullets summarize the industry's proposed approach to address this issue:

- Industry's proposal for new plants under construction is consistent with current NRC practice and regulatory guidance for operating nuclear plants. NEI 96-07, *Guidelines for 10 CFR 50.59 Implementation*, Revision 1, which is endorsed by NRC Regulatory Guide 1.187, provides that licensees may design, plan, install and test — but not implement — proposed modifications pending approval of a required license amendment. Required license amendments must be approved before modifications may be "implemented," i.e., before modifications are placed in

service such that technical specifications apply. In this way, technical specification operability requirements provide a "compliance point" for operating plants, that is, the point by which license amendments must be approved before completed modifications may be placed in service or otherwise credited in the licensing basis.

- NRC processes applicable to new plant construction under a Part 52 COL provide compliance points analogous to those for operating plants. These checkpoints include: (1) ITAAC closure; and (2) initial applicability of plant technical specifications upon the Section 52.103(g) finding that the ITAAC acceptance criteria in the combined license are met. By their nature, ITAAC-related LARs must be dispositioned prior to the Section 52.103(g) finding (prior to plant operation). LARs that do not involve ITAAC would need to be dispositioned before associated technical specifications (if any) become applicable.
- Analogous to operating plant licensees, the industry proposal would allow Part 52 new plant licensees to design, procure, fabricate, install and test design elements that differ from those approved in the COL pending NRC approval of required LARs. Applying the concept of compliance points to changes during construction, NRC approval of LARs would be required before closure letters for affected ITAAC are submitted (if any), or before associated technical specifications initially apply.
- The extent of changes during construction is limited by both practical considerations and NRC regulations. Because NRC action on required license amendments may come after substantial work has been performed, licensees are not expected to proceed with changes where timely NRC approval is judged to be highly uncertain (e.g., proposed use of a new Code or analytical methodology, or a proposed change that is so extensive as to constitute a material alteration to the approved design).
- It is our view that the Section 50.10 definitions of "construction" and "not construction" do not inform and/or do not apply to the process for making changes after a COL is issued (a concept that the NRC staff has recently put forward). For changes that require NRC approval prior to implementation, a more workable approach is to utilize the appropriate compliance points during construction for ensuring required LARs are approved prior to "implementation," as discussed above.

As discussed in public meetings, sound policy and regulatory bases support the industry's proposed approach for resolving issues related to changes during construction:

- The industry proposed approach is consistent with existing NRC processes, long-standing NRC regulatory guidance, and industry practice at operating nuclear plants.
- This approach will not limit or otherwise impact the required preparation of analyses or the consideration of safety and environmental impacts of proposed changes as part of the normal LAR process.
- This approach will not affect the opportunity for a hearing in connection with proposed NRC license amendments.

- As is the case with operating plants, NRC denial of any LAR would require the licensee to restore the design to that approved by the NRC or adopt an alternative design acceptable to the NRC. In either case, construction will be in accordance with the COL (including any amendments thereto).
- The existing ITAAC process will assure that the plant is built in accordance with its approved design. To change an ITAAC, an LAR is required per 10 CFR 52.98(f).
- Industry's proposal ensures transparency. The NRC and the public will know in detail about all proposed changes because the licensee will have submitted an LAR describing those changes. Additionally, licensees will share advance information about planned changes with the NRC to support NRC resource and inspection planning.
- Standardization is promoted because the industry's proposed approach facilitates incorporation of desired changes into first-of-kind units, and thus all follow-on units, as appropriate.
- Adopting the industry proposal will avoid unnecessary construction hold points that could result if NRC approval of LARs is required before key construction activities may proceed.

We propose to reflect this approach in industry guidance, with the goal of achieving timely NRC endorsement in a regulatory guide. To this end, as identified in NEI's May 19, 2010 letter, we have already begun work on a supplement (Appendix C) to NEI 96-07 that will provide guidance on making changes under a Part 52 combined license, including guidance on compliance points for changes that require NRC approval prior to implementation. We expect that the proposed industry guidance will provide a framework for detailed discussion with the NRC staff and resolution of issues related to changes during construction under Part 52.

To facilitate this activity, and to provide a timely indication of convergence on a path forward on this important issue, we request a response to this letter within 30 days. We are prepared to meet with the staff to facilitate consideration of the industry proposal.

If you have any questions, please contact me at 202-739-8087; rjb@nei.org or Kimberly Keithline at 202-739-8121; kak@nei.org.

Sincerely,

Russell J. Bell

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