

December 22, 2010

MEMORANDUM TO: William F. Burton, Chief
Rulemaking and Guidance Development Branch
Division of New Reactor Licensing
Office of New Reactors

FROM: R. Frederick Schofer, Project Manager */RA/*
Rulemaking and Guidance Development Branch
Division of New Reactor Licensing
Office of New Reactors

SUBJECT: SUMMARY OF DECEMBER 2, 2010, PUBLIC MEETING WITH
INDUSTRY'S NEW PLANT WORKING GROUP ON COMBINED
LICENSE APPLICATIONS

On December 2, 2010, the U.S. Nuclear Regulatory Commission (NRC) staff held a public meeting at the Nuclear Energy Institute (NEI) Office in Washington, D.C., with the industry's New Plant Working Group (NPWG) on Combined License Applications (COLAs). The purpose of the meeting was to discuss issues confronting the industry and the NRC regarding the licensing of new reactors. The associated meeting notice is available through the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML103140095. The following provides a brief summary of the meeting.

Summary

Mr. R. Frederick Schofer, Rulemaking and Guidance Development Branch (NRGA), Division of New Reactor Licensing (DNRL), Office of New Reactors (NRO), opened the meeting and announced that the NRC was prepared to address the following topics and respond to industry questions and concerns raised during these discussions and any additional industry topics that may have been raised during internal industry discussions of the NPWG:

1. Budget/Schedule Status Update for New Reactors
2. Overview of NRC Non-Concurrence and the Differing Professional Opinion (DPO) Process
3. Office of the Advisory Committee on Reactor Safeguards (ACRS) Concerns Regarding the Design Acceptance Criteria (DAC)
4. Changes during Construction
5. Update on Model Combined License (COL)
6. Construction Reactor Oversight Process (cROP) Update

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Discussion Topics:

Budget/Schedule Status Update for New Reactors (D. Matthews)

Mr. David B. Matthews, Director of DNRL, stated that the NRC is getting very close to requesting Commission approval to publish for public comment a proposed rulemaking that would certify an amendment to the Advanced Passive (AP) 1000 standard plant design. The NRC has also recently transmitted schedule rebaselining letters for the reviews of Vogtle and V.C. Summer, which reflect changes to make the COL review schedules consistent with the associated design certification (DC) review schedule or associated permit schedules. Also in response to a request from the Tennessee Valley Authority, the NRC has suspended the review of Bellefonte Units 3 and 4 COLA indefinitely. Other schedule rebaselining letters should be expected as the NRC evaluates documents affecting a project's business case, other regulator's reviews, and each licensee's progress in pursuit of permits and assesses their impact on the schedule for the application under consideration. In addition, Mr. Matthews mentioned that the Fiscal Year (FY) 2011 budget for the NRC is pending approval by Congress and that the FY 2012 budget was submitted to the Office of Management and Budget for review. Mr. Matthews also informed the meeting attendees that the NRC has begun the FY 2013 budget development process. To facilitate estimating resource and budget needs, the NRC issued Regulatory Issue Summary (RIS) 2010-10 (ADAMS Accession No. ML102720901), which requests applicants and potential applicants to voluntarily submit information to the NRC on their future plans for submittal of new reactor licensing applications or permits, amendments, topical reports, application revisions, construction activities, operator training, and pre-construction activities including construction plans and schedules for fabrication of modules and large components submittals. The information received in response to RIS 2010-10 will assist the NRC in allocating its FY 2013 resources for acceptance review, anticipated licensing actions, and inspection support.

In response to a question from Mr. Doug Walters, NEI, on whether plans for small modular reactors (SMRs) should be included in these responses, Mr. Matthews replied that this request is not limited to large base load reactors and any plans for SMRs including those planned to be licensed under the older Part 50 power reactor licensing process should be submitted in the response.

Mr. Russell Bell, NEI, asked whether the licensee's response to RIS 2010-10 was the appropriate vehicle to identify anticipated licensing actions in FY 2012. Mr. Matthews replied that any updates to applicant information for FY 2012 should be discussed with the NRC when this information is known by the applicant and need not wait for inclusion in a response to a RIS request. Mr. Matthews further stated that whenever there is a material change in a licensee's plan, there is value for that licensee to inform the NRC of the changes as the agency wants to be in a position to support licensee planned activities that are underway. He emphasized that there is a great advantage in keeping the NRC informed of applicant or potential applicant plans.

Overview of NRC Non-Concurrence Process and the Differing Professional Opinion Process (T. Bergman)

Mr. Thomas A. Bergman, Director of the Division of Engineering (NRO/DE), provided an overview of the various mechanisms available within the NRC for expressing and having differing views heard by decision-makers.

Mr. Bergman stated that in addition to informal discussion, which should be sufficient to resolve most issues, individuals have three additional processes to express differing opinions. These are the Open Door Policy, the Non-Concurrence Process, and the DPO Process. The Open Door Policy is described in Management Directive (MD) 10.160 (ADAMS Accession No. ML041490186) and the NRC Differing Professional Opinions Program is described in MD 10.159 (ADAMS Accession No. ML041770431). The NRC Non-Concurrence Process is an interim policy which the staff will follow until a final MD is issued and is described in draft MD 10.158 (ADAMS Accession No. ML070660506). The Open Door Policy is an informal process that supports and allows any employee to communicate concerns or issues directly to any level of management up to and including a Commissioner or the Chairman of the NRC.

The non-concurrence process applies only to documents in concurrence and provides individuals with the opportunity to challenge positions in draft documents. These issues are usually resolved within line management during the concurrence process although a Senior Executive Service (SES) Manager must perform the final review. Although there is no set schedule for this process there are expectations that it be completed in a reasonable period of time. In addition, there is no appeal process, although, the DPO process is still available. Mr. Bergman broadly discussed recent examples of non-concurrence processes that he was familiar with and stated that the most recent example was an issue regarding a dissenting view on the AP1000 shield building safety evaluation report with respect to the acceptance of brittle structural module to be used for the cylindrical shield building wall. A redacted public version of this document is accessible under ADAMS Accession No. ML103370648.

The DPO Program is a formal process that allows employees and contractors to have their differing view on a final management decision or policy position, or who take issue with a proposed or established agency practice involving technical, legal, or policy issues addressed. For example, a DPO cannot be filed against a design review underway, instead the non-concurrence process would be used. A DPO can only be filed after a final staff decision is made and is not undergoing staff review such as after a final safety evaluation report (FSER) is issued. After a DPO filing is submitted, an ad hoc review panel is formed with personnel who were not previously involved in the issue to assess the concern. This panel then makes recommendations to the responsible Office Director or Regional Administrator, who reviews the panel's recommendations and provides the submitter with a decision and rationale for the decision. An appeal process is available.

ACRS Concerns Regarding the Design Acceptance Criteria (T. Bergman)

Mr. Bergman stated that early discussions with the ACRS focused on the policy of accepting the use of DAC in lieu of providing detailed design information in a limited number of design area as requested by the DC applicants on a case-by-case basis in which the ACRS expressed some concerns for its use. Over the summer, the staff worked with the ACRS to clarify DAC use, which culminated in the ACRS issuing its August 9, 2010 letter report (ADAMS Accession No. ML102000425) where the ACRS concluded that:

- DAC closure requires expertise, judgment, and interpretation. It should be performed by NRC staff experts with an independent assessment by the ACRS.

- It is preferable that all DAC be resolved no later than the COL stage. However, whether resolved as part of the COL process or post-COL, proper closure of DAC requires a consistent scope and depth of evaluation in accord with our first recommendation.

The October 7, 2010 letter (ADAMS Accession No. ML102650565) provided the staff's responses to the ACRS conclusions and recommendations contained in the ACRS's August letter and provided the staff's perspectives on the use of DAC. The staff also met with the ACRS Future Plant Design Subcommittee meeting on October 21, 2010, to provide an overview of DAC and to discuss specific DAC examples and inspection activities. Mr. Bergman stated that these interactions resulted in the ACRS concluding in their November 9, 2010 letter (ADAMS Accession No. ML103120226) that substantial sources of uncertainty in the DAC closure process were resolved although they expressed their continue desire to be involved in the DAC inspection program.

Mr. Bergman concluded his presentation by stating that the first DAC inspection was completed at the South Texas Project (STP) as part of a pilot program this summer and the second DAC inspection is currently scheduled for February 2011. The staff will share the balance of the DAC inspection procedures with the ACRS by the end of the calendar year and is briefing the ACRS as they implement the STP pilot program to inform them how the DAC are being closed.

Mr. Bell, NEI, asked whether the Commission needs to arbitrate or close the gap between the staff and the ACRS to resolve the disagreement regarding DAC use and closure. Mr. Bergman responded the Commission did not appear to believe it necessary to address this concern given the SRM issued in response to the November 5, 2010 Commission meeting with the ACRS on DAC.

Changes during Construction (J. Wilson)

Mr. Jerry Wilson (NRO/DNRL/NRGA) was introduced to present this topic. Mr. Wilson provided an overview of the status of this effort and identified the four problem statements that are being addressed by this topic:

1. Determine the activities, if any that can be performed by licensees during construction while the NRC is reviewing requested changes to the licensing basis (license amendments).
2. Determine if changes should be recommended for the NRC's enforcement policy to provide for enforcement discretion during new plant construction.
3. Determine for new plants the applicability of the existing Title of the *Code of Federal Regulations* (10 CFR), Section 50.59 guidance (NEI 96-07, Revision 1) and what changes are necessary to this guidance.
4. Establish guidance that should be used for evaluating changes to the severe accident design features (VIII.B.5.c) of each DC rule (construction & operation).

Mr. Wilson continued by stating that at the American Nuclear Society 2010 Utility Working Conference held on August 9, 2010, he presented the working group's proposed solution to problem statement number 1 and had discussions with industry representatives on this proposed

solution. As a result of these discussions, Mr. Michael R. Johnson, the Director of NRO, requested an alternative proposal for consideration by NRO management. The alternative proposal was presented at the November 30, 2010 public meeting to discuss the workability of the alternative proposal with industry representatives. The alternative process would result in three types of license amendments during construction. The first type is the normal license amendment process described in § 50.90 of the regulations where the licensee has sufficient time to get NRC approval of its request prior to installation of the changes to structures, systems and components (SSCs). The second type is the proposed alternative license amendment process where the licensee is requesting to proceed with installation of the changed SSC at the licensee's risk while the NRC is reviewing the requested license amendment. The third type is the proposed accelerated alternative amendment process where the licensee is requesting an expedited process in order to proceed with installation of the changed SSC, so that installation of the change does not adversely impact the project construction schedule critical path.

Both the alternative and the accelerated alternative proposed processes will have a "hold" point, so that NRO staff can perform a "special acceptance" review of the license amendment request (LAR). After NRO "accepts the alternative LAR for review," the licensee can install the changed design (at risk), in accordance with its specified construction sequence. The staff's "acceptance of the LAR for review" does not imply any pre-approval of the LAR.

In response to a question from Mr. Frank Gillespie (Mitsubishi) regarding the form and content for NRC acceptance of a LAR for alternative review, Mr. Matthews stated that NRO's acceptance of a request for an alternative process will be provided in a letter, which will state..."no objection to proceeding with construction at risk."

Mr. Wilson continued by explaining that the LAR submittal for either alternative process requires:

1. Notification that the licensee wants to adopt the alternative process
2. Technical completeness of the LAR
3. New or changed inspection, test, analysis, and acceptance criteria (ITAAC)
4. Inspectability issues, identification of construction sequences that could impact NRC's ability to perform inspection activities.

The LAR for the accelerated alternative amendment process can be submitted in two parts. The first part must include a notification to the NRO project manager stating that the licensee is requesting the accelerated alternative process and the inspectability information. The first part will trigger NRO's special acceptance review. The second part must include the remainder of the alternative process submittal.

Mr. Wilson concluded his presentation by specifying the following steps for this alternative proposal include:

- Statement by the nuclear industry's representatives that they support this alternative proposal and agree it is workable. Mr. Matthews stated that NRO needs this assurance from the nuclear industry before the staff performs further work on this proposal.
- Decision by NRO management to support this alternative proposal and direct NRO staff to further develop this proposal and the supporting guidance.

Mr. Bell, NEI, expressed his appreciation for Mr. Wilson's summary and understood that the proposal is at a conceptual stage. He also appreciated the staff working through these issues to define an effective change process that the nuclear industry believes is necessary and needed for constructing a first-of-a-kind design. He also stated that he understood the notification process and appreciated the need for the identification of construction sequences that could impact NRC's ability to perform inspection activities. The difficulty in the two alternative license amendment processes expressed by Mr. Bell and other meeting attendees was the uncertainty of the level of detail needed to be provided to receive staff acceptance of the LAR for review. Mr. Matthews responded to this general concern by stating that there is ample time and opportunity to work through the details in finalizing the guidance document that would describe this process which includes an opportunity to provide comments through the working group and during the public comment period. Mr. Matthews emphasized the need for timely industry feedback on the general concept and workability of this proposal so that this change process can be finalized before it is needed. The NEI meeting participants acknowledged this action item to respond to this NRC request, but stated that they were unprepared to provide that input during this meeting.

Update on Model Combined License (E. Oesterle)

Mr. Eric R. Oesterle (NRO/DNRL/NRGA) was introduced to present this topic. Mr. Oesterle stated that the Model COL was originally developed as a generic template for what a COL pursuant to Part 52 would look like in terms of its format and content (i.e., specific license conditions) and was based on the operating licenses issued under Part 50 and included provisions for licenses under Parts 30, 40, and 70. The staff recommendation was submitted to the Commission for approval under SECY-00-0092 (ADAMS Accession No. ML003680823) and the recommendation was approved by the Commission in SRM-SECY-00-0092 (ADAMS Accession No. ML003680823) in September 2000 with no dissenting votes.

The Model COL draft template was updated and discussed with external stakeholders during public meetings held in January, April, and May of 2009 in which several issues for consideration were discussed including the security and fire protection license conditions; the form of the ITAAC license appendix; the wording of operational programs license conditions; and the license conditions for power ascension testing. Following these public meetings, NEI provided written comments on the draft Model COL template in their June 3, 2009 letter (ADAMS Accession No. ML091671087).

Mr. Oesterle stated that the NRC staff is continuing to develop the Model COL draft template and has been considering the NEI comments and developing responses to those comments. The staff is aware of and has been engaged in discussions on license conditions for the lead COL application reviews and some specific issues arose that are relevant to license conditions and impact the Model COL. These issues include design-specific and first-of-a-kind testing, 30/40/70 licenses, limitations on chemical forms and quantities and their impact on the scope and timing for implementation of emergency planning, material control and accounting programs for special nuclear material, and geo mapping of excavations. The staff believes there will be consistency between the Generic Licensing Conditions (LCs) in the Model COL and those specific LCs proposed by COL applicants and reviewed by the staff.

The staff plans to schedule a public meeting within the next two months to discuss the updated Model COL and NRC responses to the NEI comments contained in their June 2009 letter. The staff also plans to submit a Commission paper by March 2011 to request approval of the Model COL. In summary, Mr. Oesterle stated that this timeline allows for Commission review of the Model COL before the issuance of any COLs.

Construction Reactor Oversight Process Update (J. Tappert)

Mr. John R. Tappert, Deputy Director of the Division of Construction Inspection and Operational Programs (NRO/DCIP), stated that the staff submitted SECY-08-0155, "Update on the Development of the Construction Inspection Program for New Reactor Construction under 10 CFR Part 52," dated October 17, 2008 (ADAMS Accession No. ML082330415), and subsequently briefed the Commission on October 22, 2008. Following the briefing, the Commission issued a Staff Requirements Memorandum (SRM) M081022, "Periodic Briefing on New Reactor Issues," (ADAMS Accession No. ML083400193) directing the staff to reconsider the construction assessment process and propose policy options to the Commission to address more objective elements, such as construction program performance indicators (PIs) and a significance determination process (SDP) analogous to those used in the reactor oversight process (ROP). On July 1, 2010, the construction assessment program that is described in Inspection Manual Chapter (IMC) 2505, "Periodic Assessment of Construction Inspection Program Results," was implemented at Vogtle Units 3 and 4 to ensure that the agency can appropriately assess licensee construction activities. The staff recently completed the first quarterly assessment of Vogtle's ongoing construction activities.

From December 2009 to August 2010, the staff reached out to stakeholders for input on construction assessment process options during 15 public meetings to consider all of the ROP elements and to solicit feedback on the development of construction assessment program options.

The NRC staff working group met with the NEI's cROP Task Force led by Mr. Tom Houghton at scheduled public meetings and other stakeholders over the period of several months to consider all of the ROP elements, including a construction regulatory framework, a construction significance determination process (SDP) to determine the significance of finding identified during the construction inspection program (CIP), and construction performance indicators.

The staff developed three options for the Commission in setting policy for the construction assessment program. Each option uses traditional enforcement to disposition violations associated with discrimination against workers for raising safety issues or other willful violations, actions that may adversely affect the NRC's ability to monitor utility activities, including violations of the requirements in 10 CFR 50.59, and incidents with actual safety consequences. In addition, each option employs the use of a construction action matrix (CAM) to determine the NRC's regulatory response to licensee performance. Further, each option implements the near-term approach to safety culture that is described in IMC 2505. The use of construction PIs is not recommended in any of the options. The options differ primarily in the use of a regulatory framework and in the approach to determining the significance of construction findings. Mr. Tappert described the three options as:

1. Status quo – Continue to implement the construction assessment program as currently described in IMC 2505,

2. Modified regulatory framework – Implement a construction regulatory framework, including strategic performance areas and cornerstones, and
3. Significance determination process – Develop a construction assessment program that includes a regulatory framework, the use of a construction SDP to determine the significance of findings identified during the CIP, and the use of a CAM to determine the appropriate NRC response to degrading licensee performance.

Mr. Tappert stated that the staff recommendation to the Commission contained in SECY-10-0140 (ADAMS Accession No. ML102500499) is to approve the continued development and implementation of Option 3, the significance determination process. The staff believes that this option provides for the most objective, predictable, and transparent approach to the construction oversight and performance assessment.

Mr. Tappert identified that a briefing is scheduled for December 16, 2010 to brief the Commission on the cROP options. The staff plans to continue to implement the assessment program as described in IMC 2505 at Vogtle and other sites being constructed pursuant to Part 52. If the Commission approves the recommended approach, the staff would need one year to develop the construction SDPs and other guidance documents and train headquarters and regional staff on the new oversight process. The new program would be piloted for 12 months and then fully implemented or replaced by a new recommendation depending on the results.

Industry identified issues

Mr. Bell, NEI, acting Chairman of the NPWG, thanked the NRC staff who travelled to the meeting and those who participated via conference phone for the presentations provided and stated that he had no additional comments or questions. Mr. Bell also added that the next NPWG meeting is planned for late February 2011.

Public Comments

There were no public comments or questions.

Hearing no more questions, Mr. Schofer adjourned the meeting.

Enclosure:
Attendance List

2. Modified regulatory framework – Implement a construction regulatory framework, including strategic performance areas and cornerstones, and
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Enclosure:
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| OFFICE | PM:NRO/DNRL/NRGA | LA:NRO/DNRL/NRGA* | BC:NRO/DNRL/NRGA |
| NAME | FSchofer | RRobinson | WBurton |
| DATE | 12/20/10 | 12/21/10 | 12/22/10 |

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**PUBLIC MEETING WITH INDUSTRY'S NEW PLANT WORKING
GROUP ON COMBINED LICENSE APPLICATIONS**

December 2, 2010

Attendance List

| Name | Organization |
|----------------------|---------------------|
| Fred Schofer | NRC |
| David Matthews | NRC |
| Pat Madden | NRC |
| Chris Miller | NRC |
| Eric Oesterle | NRC |
| John Tappert | NRC |
| Jerry Wilson | NRC |
| Russ Bell | NEI |
| Sandy Rupprecht | Westinghouse |
| Ken Barry | EPRI |
| Bill Maher | FPL |
| Brian McIntyre | Areva |
| Bryan Dolan | Duke Energy |
| Jack Bailey | TVA |
| Joe Hegner | Dominion |
| Don Dyksterhouse | Progress Energy |
| Frank Gillespie | Mitsubishi |
| Mark Harvey | NEI / UniStar |
| David Lewis | PSEG |
| Mark McBurnett | STPNOC |
| Pete Iven | SNC |
| Charles Pierce | SNC |
| Al Paglia | SCE&G |
| Patricia Campbell | GEH |
| Brian Johnson | GEH |
| Mark A. Scanlan | Toshiba |
| Jim Maddox | INPO |
| Dave Harwood | DTE Energy |
| Jeannie Rinckel | NEI |
| Marina Mateski | Numark Associates |
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| Via Telephone | |
| Tom Bergman | NRC |
| | |

Enclosure

DCWG - Combined (All)

(Revised 08/25/2010)

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