UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

OFFICE OF THE SECRETARY

December 14, 2010

COMMISSION VOTING RECORD

DECISION ITEM: SECY-10-0142

TITLE: PROPOSED RULE: U.S. ADVANCED BOILING WATER REACTOR AIRCRAFT IMPACT DESIGN CERTIFICATION AMENDMENT (RIN 3150-AI84)

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of December 14, 2010. Commissioner Magwood did not participate in this matter.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:
1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Jaczko
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
OGC
EDO
PDR

VOTING SUMMARY - SECY-10-0142

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACZKO	X				X	11/24/10
COMR. SVINICKI	X				X	12/8/10
COMR. APOSTOLAKIS	X				X	12/2/10
COMR. MAGWOOD				X		12/7/10
COMR. OSTENDORFF	X				X	12/2/10

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on December 14, 2010. Commissioner Magwood did not participate in this matter.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Gregory B. Jaczko

SUBJECT: SECY-10-0142 – PROPOSED RULE: U.S. ADVANCED BOILING WATER REACTOR AIRCRAFT IMPACT DESIGN CERTIFICATION AMENDMENT (RIN 3150-AI84)

Approved __X__ Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _ __ Attached __X__ None ___

_____
SIGNATURE

_____
DATE

Entered on "STARS" Yes _x_ No ___

Chairman Jaczko's Comments on SECY-10-0142,
"Proposed Rule: U.S. Advanced Boiling Water Reactor Aircraft Impact Design Certification Amendment"

I approve the staff's recommendation to publish the proposed rule that will amend Appendix A to 10 CFR Part 52 so that applicants intending to construct and operate a U.S. Advanced Boiling Water Reactor complies with the Aircraft Impact Assessment rule. I commend the staff for the timely completion of review and inspection activities to verify that the applicant has taken the necessary actions to enhance the design's inherent robustness, including addressing shortcomings that were identified during the inspection.

I approve the recommended approach for treating multiple suppliers of a single design through the use of options and branches within an appendix to Part 52. Aside from the formatting changes within an appendix, there is no functional or substantive difference between using separate appendices or separate branches within an appendix to house the certified (i.e., essentially complete) design supplied by multiple vendors. It appears that the primary rationale for adopting branches within an appendix over separate appendices is to make it easier to justify, adopt, and use the options approach to support the licensing activities associated with the South Texas Project combined license application.

I agree with the staff that the options approach should be limited to entities that are qualified to supply a certified design and seeking limited-scope amendments to that pre-existing certified design. Prior to its publication, the staff should revise the proposed Federal Register Notice to provide a clearer narrative description of the options approach and proposed limitation on the use of the options approach using plain language. It should be acknowledged in the revised narrative that the use of the options approach by the NRC is not fully in the spirit of the Commission Policy Statement on Nuclear Power Plant Standardization. The adoption of the options approach by the NRC, albeit permissible, will introduce complexity and does not encourage standardization within a single design.

On the whole, the use of options and branches are pragmatic innovations to unanticipated process questions that have no effect on the thoroughness of NRC's safety, security, and environmental reviews.

Gregory B. Jaczko Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER SVINICKI

SUBJECT: SECY-10-0142 – PROPOSED RULE: U.S. ADVANCED BOILING WATER REACTOR AIRCRAFT IMPACT DESIGN CERTIFICATION AMENDMENT (RIN 3150-AI84)

Approved __XX__ Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _XX_ Attached _XX_ None ___

I approve subject to the comments and edits attached.

SIGNATURE

12/8/10
DATE

Entered on "STARS" Yes ✓ No ___

Commissioner Svinicki's Comments on SECY-10-0142
Proposed Rule: U.S. Advanced Boiling Water Reactor Aircraft Impact Design Certification Amendment (RIN 3150-AI84)

I approve for publication in the *Federal Register* the proposed amendments to 10 CFR Part 52 that would certify an amendment to the U.S. Advanced Boiling Water Reactor (ABWR) standard plant design as put forth in SECY-10-0142, subject to the edits attached.

I endorse the staff's recommendation to adopt the "branches" alternative to be used in cases for design certifications with multiple suppliers, with use of the "options" approach in the case of certain limited-scope design certification amendments, such as the instant case of the South Texas Project Nuclear Operating Company amendment to comply with the aircraft impact rule. In addition to the attached edits, the notice should be modified, prior to its publication in the *Federal Register*, to clarify that – under this approach -- applicants seeking amendments to already certified designs must be found to be qualified to supply the limited scope of the revisions they seek. I understand this common sense interpretation to be the staff's meaning, but the notice should so state, explicitly.

The staff has gone to some length in the draft Statements of Consideration to explain the proposed approach of "options" and "branches" and has included significant detail, which both defines the approach and outlines its potential benefits. I think the staff has proposed a fruitful innovation and I concur in the analysis. The Commission Policy Statement on Nuclear Power Plant Standardization [52 FR 34884] embraced the following benefit of certified reference designs:

> Use of certified reference designs in future license applications should enhance plant safety, increase the efficiency of the NRC review process, and reduce complexity and uncertainty in the regulatory process. A regulatory framework which provides for certification of reference designs by means of rulemaking will alleviate the need to reconsider design issues in individual licensing proceedings on future license applications which reference the certified designs. Areas included within the scope of the reference system design certification rulemaking would require no further review by the staff, the Advisory Committee on Reactor Safeguards (ACRS), or the hearing boards.

The staff's proposed innovation here captures precisely this efficiency and, in that spirit, is wholly consistent with the underlying objectives at the heart of the existing policy statement. At the same time, the proposal confronts pragmatically the reality facing the Commission in 1987, as now, that commercial entities in the nuclear sector will go out of existence or be corporately reconstituted in ways we cannot predict. Such changes, on a time scale more dynamic than the duration of individual design certifications, will continue to be a fact of life. The staff proposal addresses this reality within a structure that leaves undisturbed the issue resolution and finality accorded to the original certified design (as amended in any subsequent rulemakings) or to the certified design of any other suppliers in any previously approved branches. This is a thoughtful approach and I support it. Should the public comment period result in some heretofore unconsidered aspect being brought forward related to this proposed structure, I will, of course, consider it as I review the staff's proposed responses to public comment, presented to the Commission with the draft final rule.

Kristine L. Svinicki 12/08/10

C. Changes to Appendix A to Part 52 - Design Certification Rule for the U.S. Advanced Boiling Water Reactor X

IV. Section-by-Section Analysis

A. Introduction (Section I)

B. Definitions (Section II)

C. Scope and Contents (Section III)

D. Additional Requirements and Restrictions (Section IV)

E. Applicable Regulations (Section V)

F. Issue Resolution (Section VI)

G. Processes for Changes and Departures (Section VIII)

H. Records and Reporting (Section X)

V. Agreement State Compatibility

VI. Availability of Documents

VII. Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Preparation of Comments on the Proposed Amendment to the U.S. ABWR Design Certification

VIII. Plain Language

IX. Voluntary Consensus Standards

X. Finding of No Significant Environmental Impact: Availability

XI. Paperwork Reduction Act Statement

XII. Regulatory Analysis

XIII. Regulatory Flexibility Act Certification

XIV. Backfitting

I. Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site http://www.regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against

to approve designs by rulemaking rather than licensing, the Commission adopted 10 CFR 52.51(c), which states, in relevant part:

> Notwithstanding anything in 10 CFR 2.390 to the contrary, proprietary information will be protected in the same manner and to the same extent as proprietary information submitted in connection with applications for licenses, provided that the design certification shall be published in Chapter I of this title.

10 CFR 52.51(c) (1990, as originally promulgated in the 1989 Part 52 rulemaking, see 54 FR 15372; April 18, 1989, at 15390).[2]

Having protected proprietary information developed by the design certification applicant, the Commission then adopted several additional rulemaking provisions in 10 CFR Part 52 providing additional regulatory protection to the original design certification applicant against unfair use of the design certification by other suppliers. The Commission required the (original) design certification applicant, as well as the applicant for renewal of the design certification, to include in the application:

> a level of design information sufficient to enable the Commission to judge the applicant's proposed means of assuring that construction conforms to the design and to reach a final conclusion on all safety questions associated with the design before the certification is granted. The information submitted for a design certification must include performance requirements and design information sufficiently detailed to permit the preparation of acceptance and inspection requirements by the NRC, and procurement specifications and construction and installation specifications by an applicant.

10 CFR 52.47(a)(2) (1990, as originally promulgated in the 1989 Part 52 rulemaking, see 54 FR 15372; April 18, 1989; at 15390);[3] 10 CFR 52.57(a).

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[2] As originally adopted in 1989, 10 CFR 52.51(c) consisted of two sentences. The first sentence limited the bases for a decision in a hearing on a design certification to information on which all parties had an opportunity to comment; the second sentence is the language of the current regulation. The first sentence was removed in 2004 as a conforming change when the Commission removed the hearing requirements for design certification (69 FR 2182; January 14, 2004).

[3] This language was moved to the introductory paragraph of the current 10 CFR 52.47 in the 2007 revision of 10 CFR Part 52.

The Commission also adopted 10 CFR 52.63(c), requiring the applicant referencing the design certification to provide the information required to be developed by 10 CFR 52.47(a)(2) or its equivalent:

> The Commission will require, before granting a construction permit, combined license, operating license, or manufacturing license which references a design certification rule, that information normally contained in certain procurement specifications and construction and installation specifications be completed and available for audit if the information is necessary for the Commission to make its safety determinations, including the determination that the application is consistent with the certification information. This information may be acquired by appropriate arrangements with the design certification applicant.

10 CFR 52.63(c) (1990). By requiring a level of detailed information supporting the certified design to be developed and available for NRC audit at renewal and when the design was referenced for use, the Commission ensured (among other things) that entities who were not the original design certification applicant would not have an inordinate financial advantage when either supplying the certified design to a referencing user, or referencing the certified design in an application.

The Commission also relied on its statutory authority to make a technical qualifications finding under Section 182 of the Atomic Energy Act of 1954 (AEA) as amended, to adopt 10 CFR 52.73, which effectively prohibits a COL applicant from referencing a certified design unless the entity that actually supplies the design to the referencing applicant is technically qualified to supply the certified design:

> In the absence of a demonstration that an entity other than the one originally sponsoring and obtaining a design certification is qualified to supply such design, the Commission will entertain an application for a combined license which references a standard design certification issued under Subpart B only if the entity that sponsored and obtained the certification supplies the certified design for the applicant's use.

When the NRC was advised of STPNOC's intent to submit an amendment of the U.S. ABWR design certification, it began a process of identifying and considering possible regulatory alternatives, with the goal of identifying a single regulatory approach and structure to be used for all design certifications with multiple suppliers. The NRC considered three alternatives which it could reasonably select:

1. Separate rules: Develop separate design certification rules for each supplier.
2. Branches: Develop one design certification rule with multiple branches, with each branch describing a complete design to be supplied by each supplier.
3. Options: Develop one design certification rule with options, with each option describing a portion of the certified design which may be selected by the user as an option to the original "reference" certified design.

Table 1 presents the NRC's current views with respect to the differences between these three alternatives.

In light of the Commission's past practice of protecting the proprietary information and legitimate commercial interests of the original design certification applicant wherever consistent with other applicable law, the NRC believes that it should consider that practice when evaluating possible alternatives for the approach and structure of a design certification rule with multiple suppliers. Upon consideration, the NRC concludes that the "branches" alternative should be adopted as the general approach for all renewals of design certifications and for major design certification amendments. The "branches" alternative: (1) is consistent with all applicable law; (2) protects the proprietary information and legitimate commercial interests of the original design certification applicant (as well as the additional suppliers); and (3) meets the NRC's regulatory concerns. Each of these considerations is discussed separately below.

<u>No statutory or other legal prohibition to the "branches" alternative</u>

There is no statutory or other legal prohibition, explicit or otherwise, against use of the "branches" alternative in the AEA, the Administrative Procedures Act the National Technology

the "common" portions of the design which each supplier must support (the "branches" alternative adopting the premise that the supplier must be technically qualified to supply all of the certified design, including the "common" portions).[9] The regulatory approach and structure must reflect a sound basis for allowing the NRC to make a technical qualifications finding with respect to the supplier. Finally, the approach and structure must allow for imposition of applicable NRC requirements on each supplier, and the legal ability of the NRC to undertake enforcement and regulatory action on each supplier.

The "branches" alternative meets all of these regulatory concerns. By creating a separate branch for the design to be supplied by the new supplier in the rule and requiring the new certified design to be described in a separate DCD created and supported by the new supplier, there is a strong basis for arguing that the certified design(s) already approved by the NRC are not affected and that the issue finality accorded to those certified designs (as controlled by 10 CFR 52.63) continues. Hence, in any rulemaking approving a new branch, the NRC need not consider any comments seeking changes to the existing certified design.

The use of a separate DCD to describe the new certified design, by its very nature serves to distinguish any substitute or new portions of the certified design sponsored only by the new supplier, and make clear that the substitute or new portions are being sponsored solely by the new supplier (because the other branches do not contain any reference to or mention of the substitute or new portions of the design sponsored by the new supplier). The use of a separate DCD describing the entire design is also consistent with the NRC's position that it must conduct a technical qualifications review of the new supplier, and make a finding that the new supplier is technically qualified to provide the entire certified design. The NRC's recommendation to use a

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[9] The NRC believes a broad finding of technical qualifications is necessary because the original design certification applicant is under no legal or NRC regulatory obligation (consistent with the concept of providing protection to the proprietary information and legitimate commercial interests of the original supplier) to provide technical support on the "common" portions of the certified design to either the new supplier or a user.

develop four U.S. ABWRs in addition to STP Units 3 & 4. Finally, STPNOC indicated that the "options" approach would not be used at renewal; the renewal application Toshiba was developing would reflect the use of the "branches" alternative. (i. e., Toshiba would be seeking approval of and supplying the entire U.S. ABWR design at renewal, including replacement proprietary information). Based on these factors, STPNOC requested that it be considered the supplier for only for that portion of the U.S. ABWR design certification necessary to comply with the AIA, and which is the subject of its amendment request.

Upon consideration, the NRC is proposing to use the "options" approach for the STPNOC amendment of the U.S. ABWR design certification, based on the following considerations. As with the "branches" alternative, there is no statute or NRC regulation prohibiting the use of the "options" approach. Nor is there any provision which prohibits the concurrent use of both alternatives—so long as the NRC is able to articulate a basis for doing so. Moreover, all of the NRC's safety and regulatory objectives are met. STPNOC is providing sufficient information to determine its technical qualifications[10] to supply the STPNOC-sponsored amendments addressing the AIA rule to third party users (i.e., users other than STPNOC itself). In addition, the NRC believes that there are no insurmountable issues in requiring the user (in most cases, the COL applicant referencing the U.S. ABWR and the STPNOC option) to prepare a single DCD integrating information from both the DCD developed by GE and the DCD developed by STPNOC. The "options" approach also avoids or addresses all of STPNOC's concerns with the use of the "branches" alternative for its request to amend the U.S. ABWR.

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[10] The NRC staff determined that STPNOC and its contractors are technically qualified to perform the design work associated with the amended portion of the ABWR design represented by STPNOC's application and to supply the amended portion of the ABWR design. However, the NRC staff determined that STPNOC, by itself, is not technically qualified to supply the amended portion of the ABWR design certification represented in STPNOC's DCD, Revision 1. The NRC is proposing a provision in the amended ABWR DCR to specify that if a COL applicant references the STPNOC option but does not show they are obtaining the design from STPNOC and Toshiba American Nuclear Energy (TANE), acting together, then the COL applicant must demonstrate that the entity supplying the STPNOC option to the applicant possesses the technical qualifications to do so.

Regulatory Feature	Alternative 1: Separate Rules	Alternative 2: One Rule with Multiple Branches	Alternative 3: One Rule with Options
			supplied by the original supplier.
Scope of Comments in Proposed Rule FRN – Renewal	Consistent with finding that NRC must make at renewal.	Consistent with finding that NRC must make at renewal.	NA (Supplier of option would not be allowed to renew the option)
Part 21 Applicability	Each supplier is responsible for Part 21 compliance with respect to its design.	Each supplier is responsible for Part 21 compliance with respect to its design branch. NOTE: NRC is responsible for advising suppliers of branches of any defects in the portion of the design which was sponsored by another supplier.	Original supplier Responsible for Part 21 compliance with respect to the entire design with the exception of the option(s). Supplier of option Responsible for Part 21 compliance with respect to its option. NOTE: NRC is responsible for advising: (i) suppliers of options of any defects in the design of the original supplier; and (ii) original supplier of any defects in any of the options, for the purpose of the facilitating the original supplier's consideration of the option's defect on the original supplier's design.
Supplier Recordkeeping Responsibilities	Each supplier required to maintain its DCD.	Each supplier required to maintain the DCD representing the branch it sponsored.	Original supplier Maintain the DCD for the entire design. Supplier of option Maintain the DCD for its option.
Mode of Referencing by COL applicant	Reference the selected rule.	Reference one branch of the rule.	Reference the rule with identification of option selected.

NOTES:

1. If there is only a single description in a table cell, then that means that the description applies to all suppliers.

2. For purposes of this table, "supplier" means an entity that: (1) submits an application for a new design certification, an amendment to an existing design certification, or a renewal

for a design certification; and (2) intends to, has offered, or is providing design and engineering services related to the certified design to a license applicant. The information in this table does not apply to petitions for rulemaking under 10 CFR 2.802 submitted by entities who are not acting, do not intend to act, or the NRC believes are not reasonably capable of acting as a "supplier." "Original supplier" means the supplier who was the original applicant for the design certification.

C. Changes to Appendix A to Part 52 - Design Certification Rule for the U.S. Advanced Boiling Water Reactor.

1. Introduction (Section I).

The NRC proposes to amend Section I, "Introduction," to identify STPNOC as the applicant for the amendment of the U.S. ABWR design certification rule to address the AIA rule, 10 CFR 50.150. The portion of the certified design sponsored by STPNOC in this amendment, and which this rulemaking finds STPNOC (acting together with TANE) is technically qualified to supply, is termed the "STPNOC certified design option" or "STPNOC option." As discussed in greater detail in the section-by-section analysis for Section III, "Scope and Contents," an applicant or licensee referencing this appendix may use the GE certified design (which was first certified by the NRC in a 1997 rulemaking (62 FR 25800; May 12, 1997)), or both the GE certified design together with the STPNOC option (the GE/STPNOC composite certified design).

The overall purpose of paragraph I of this appendix is to identify the standard plant design that was approved and the applicant for certification of the standard design. Identification of both the original design certification applicant and the applicant for any amendment to the design is necessary to implement this appendix, for two reasons. First, the implementation of 10 CFR 52.63(c) depends on whether an applicant for a COL contracts with the design certification applicant to provide the generic DCD and supporting design information. If the COL applicant does not use the design certification applicant to provide the design information and instead uses an alternate nuclear plant supplier, then the COL applicant must meet the requirements in paragraph IV.A.4 of this appendix and 10 CFR 52.73. The COL applicant must demonstrate that the alternate supplier is qualified to provide the standard plant design information.

reference under 1 CFR Part 51. One of the requirements of the OFR for incorporation by reference is that the applicant for the design certification (or amendment to the design certification) must make the generic DCD available upon request after the final rule becomes effective. Therefore, paragraph III.A.2 would identify a STPNOC representative to be contacted to obtain a copy of the STPNOC DCD.

The generic DCD (master copy) for the STPNOC DCD is electronically accessible in ADAMS (Accession No. ML102710198); at the OFR; and at www.regulations.gov by searching under Docket ID NRC-2010-0134. Copies of the generic DCD would also be available at the NRC's PDR. Questions concerning the accuracy of information in an application that references this appendix will be resolved by checking the master copy of the generic DCD in ADAMS. If the design certification amendment applicant makes a generic change (through NRC rulemaking) to the DCD under 10 CFR 52.63 and the change process provided in Section VIII, then at the completion of the rulemaking the NRC would request approval of the Director, OFR, for the revised master DCD. The NRC would require that the design certification amendment applicant maintain an up-to-date copy of the master DCD under paragraph X.A.1 that includes any generic changes it has made because it is likely that most applicants intending to reference the standard design would obtain the generic DCD from the design certification amendment applicant.

In addition, the NRC is proposing to revise paragraph III.B to add text indicating that an applicant or licensee referencing this appendix may reference either the GE DCD, or both the GE DCD and the STPNOC DCD. An applicant referencing this appendix would be required to indicate in its application and in all necessary supporting documentation which of these two alternatives it is implementing. This information is necessary to support the NRC's review and processing of the license application. A COL applicant that does not reference both the GE DCD and the STPNOC DCD, will be required, in accordance with 10 CFR 50.150(a)(3)(v)(B) to comply with the requirements of 10 CFR 50.150 as part of its COL application.

the Tier 1 and Tier 2 information and the rulemaking record for this appendix are resolved within the meaning of 10 CFR 52.63(a)(5). These issues include the information referenced in the DCD that are requirements (i.e., "secondary references"), as well as all issues arising from proprietary and SGI which are intended to be requirements. Paragraph VI.B.2 provides for issue preclusion of proprietary and SGI.

The NRC is proposing to revise paragraphs VI.B.1 and VI.B.2 to redesignate references to the "FSER" as references to the "ABWR FSER," and references to the "generic DCD" as references to the "GE DCD" to distinguish the FSER and DCD for the original certified design from the FSER and DCD that would be issued to support the STPNOC amendment to the U.S. ABWR design. In addition, this proposed revision would add additional text to paragraph VI.B.1 to identify the information that would be resolved by the Commission in the rulemaking to certify the STPNOC amendment to the U.S. ABWR design.

The NRC is also proposing to revise paragraph VI.B.7, which identifies as resolved all environmental issues concerning severe accident mitigation design alternatives arising under the National Environmental Policy Act of 1969 (NEPA) associated with the information in the NRC's final environmental assessment for the U.S. ABWR design and Revision 1 of the technical support document for the U.S. ABWR, dated December 1994, for plants referencing this appendix whose site parameters are within those specified in the technical support document. The NRC is proposing to revise this paragraph to also identify as resolved all environmental issues concerning severe accident mitigation design alternatives associated with the information in the NRC's final environmental assessment and Revision 0 of ABWR-LIC-09-621, "Applicant's Supplemental Environmental Report-Amendment to ABWR Standard Design Certification," for the AIA amendment to the U.S. ABWR design for plants referencing this appendix whose site parameters are within those specified in the technical support document.

Finally, the NRC is proposing to revise paragraph VI.E which provides the procedure for an interested member of the public to obtain access to proprietary and SGI for the U.S. ABWR

information

design, and to request and participate in proceedings identified in paragraph VI.B of this appendix, that is, proceedings involving licenses and applications which reference this appendix. The NRC is proposing to replace the current information in this paragraph with a statement that the NRC will specify, at an appropriate time, the procedure for interested persons to review SGI or SUNSI (including proprietary information), for the purpose of participating in the hearing required by 10 CFR 52.85, the hearing provided under 10 CFR 52.103, or in any other proceeding relating to this appendix in which interested persons have a right to request an adjudicatory hearing.

Access to such information would be for the sole purpose of requesting or participating in certain specified hearings, viz., (i) the hearing required by 10 CFR 52.85 where the underlying application references this appendix; (ii) any hearing provided under 10 CFR 52.103 where the underlying COL references this appendix; and (iii) any other hearing relating to this appendix in which interested persons have the right to request an adjudicatory hearing.

For proceedings where the notice of hearing was published before **[INSERT EFFECTIVE DATE OF RULE]**, the Commission's order governing access to SUNSI and SGI shall be used to govern access to SUNSI (including proprietary information) and SGI on the STPNOC option. For proceedings in which the notice of hearing or opportunity for hearing is published after **[INSERT EFFECTIVE DATE OF RULE]**, paragraph VI.E. applies and governs access to SUNSI (including proprietary information) and SGI for both the original GE certified design, and the STPNOC option; as stated in paragraph VI.E, the NRC will specify the access procedures at an appropriate time.

The NRC expects to follow its current practice of establishing the procedures by order when the notice of hearing is published in the *Federal Register*. (See, e.g., Florida Power and Light Co, Combined License Application for the Turkey Point Units 6 & 7, Notice of Hearing, Opportunity To Petition for Leave To Intervene and Associated Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for

would also require the design certification applicant to maintain the proprietary information and SGI referenced in the generic DCD. The NRC is proposing to replace the term "proprietary information" with the broader term "sensitive unclassified non-safeguards information (including proprietary information)." Information categorized as SUNSI is information that is generally not publicly available and encompasses a wide variety of categories including information about a licensee's or applicant's physical protection or material control and accounting program for special nuclear material not otherwise designated as SGI or classified as National Security Information or Restricted Data (security-related information) which is required by 10 CFR 2.390 to be protected in the same manner as commercial or financial information (i.e., they are exempt from public disclosure). This change is necessary because, although the NRC is not approving any proprietary information or SGI as part of this amendment rulemaking, it is approving some security-related information that is categorized as SUNSI.

This change would ensure that both GE and STPNOC (as well as any future applicants for amendments to the U.S. ABWR DCR who intend to supply the certified design) are required to maintain a copy of the applicable generic DCD, and maintain the applicable SUNSI (including proprietary information) and SGI – developed by that applicant – that were approved as part of the relevant design certification rulemakings. In the certification of the original U.S. ABWR design, the NRC approved both proprietary information and SGI as part of the design certification rulemaking. In this amendment to the U.S. ABWR design, the NRC would only be approving non-proprietary SUNSI as part of the amendment rulemaking.

The NRC notes that the generic DCD concept was developed, in part, to meet OFR requirements for incorporation by reference, including public availability of documents incorporated by reference. However, the proprietary information and SGI were not included in the public version of the DCD prepared by GE, and the SUNSI was not included in the public version of the DCD prepared by STPNOC. Only the public version of the generic STPNOC DCD would be identified and incorporated by reference into this rule. Nonetheless, the SUNSI for the

STPNOC option was reviewed by the NRC and, as stated in paragraph VI.B.2, the NRC would consider the information to be resolved within the meaning of 10 CFR 52.63(a)(5). Because this information is in the non-public versions of the GE and STPNOC DCDs, this SUNSI (including proprietary information) and SGI, or its equivalent, is required to be provided by an applicant for a license referencing this DCR.

In addition, the NRC is proposing to add a new paragraph X.A.4.a that would require the applicant for the amendment to the U.S. ABWR design to address the AIA requirements to maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) for the term of the certification (including any period of renewal). The NRC is also proposing a new paragraph X.A.4.b that would require an applicant or licensee who references this appendix to include both the GE DCD and the STPNOC DCD to maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) throughout the pendency of the application and for the term of the license (including any period of renewal). The addition of paragraphs X.A.4.a and X.A.4.b is consistent with the NRC's intent when it issued the AIA rule in 2009 (74 FR 28112; June 12, 2009, at 28121, second column).

IV. Section-by-Section Analysis

A. Introduction (Section I)

The NRC is proposing to amend Section I, "Introduction," to identify STPNOC as the applicant for the amendment of the U.S. ABWR design certification rule to address the AIA rule, 10 CFR 50.150.

B. Definitions (Section II)

The NRC is proposing to revise the definition of "generic design control document (generic DCD)" to indicate that there will be two generic DCDs incorporated by reference into this appendix – the DCD for the original U.S. ABWR design certification submitted by GE Nuclear Energy (GE DCD) and the DCD for the amendment to the U.S. ABWR design submitted by STPNOC (STPNOC DCD). This will make it clear that all requirements in this appendix

related to the "generic DCD" apply to both the GE DCD and the STPNOC DCD, unless otherwise specified.

C. Scope and Contents (Section III)

The NRC is proposing to redesignate existing paragraph A regarding the GE DCD as paragraph A.1 and to add a new paragraph A.2 indicating that the STPNOC DCD is also approved for incorporation by reference into 10 CFR Part 52, Appendix A by OFR.

The NRC is proposing to revise paragraph III.B to add text indicating that an applicant or licensee referencing this appendix may use either the GE DCD, or both the GE DCD and the STPNOC DCD. By doing so, the applicant or licensee effectively indicates which generic design it is using (i.e., the GE certified design, or the GE/STPNOC composite certified design). An applicant referencing this appendix would be required to indicate in its application and in all necessary supporting documentation which of these two alternatives it is implementing.

The NRC is proposing a minor change to paragraph III.C, which currently states that, if there is a conflict between Tier 1 and Tier 2 of the DCD, then Tier 1 controls. The revised paragraph would state that, if there is a conflict between Tier 1 and Tier 2 of a DCD, then Tier 1 controls, because the requirement would also apply to the STPNOC DCD.

Paragraph III.D establishes the generic DCD as the controlling document in the event of an inconsistency between the DCD and the FSER for the certified standard design. The NRC is proposing a change to paragraph III.D which would indicate that in the event of an inconsistency between the STPNOC DCD and the AIA FSER, the STPNOC DCD controls.

The NRC is proposing to redesignate current paragraph III.E as proposed paragraph III.F and to add a new paragraph III.E. Proposed paragraph III.E would state that, if there is a conflict between the design as described in the GE DCD and a design matter which implements the STPNOC certified design option but is not specifically described in the STPNOC DCD, then the GE DCD controls.

VI. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods, as indicated. To access documents related to this action, see Section I, "Submitting Comments and Accessing Information" of this document.

Document	PDR	Web	ADAMS
SECY-10-~~XXXX~~ 0142, "Proposed Rule - U.S. Advanced Boiling Water Reactor Aircraft Impact Design Certification Amendment"	x	x	ML102030495
STPNOC Application to Amend the Design Certification Rule for the U.S. ABWR	x	x	ML092040048
ABWR STP AIA Amendment Design Control Document, Revision 3 (public version)	x	.....	ML102770376
Applicant's Supplemental Environmental Report – Amendment to the ABWR Standard Design Certification	x	x	ML093170455
Final Safety Evaluation Report for the STPNOC Amendment to the ABWR Design Certification	x	.....	ML102710198
Environmental Assessment by the U.S. NRC Relating to the Certification of the STPNOC Amendment to the U.S. ABWR Standard Plant Design	x	.....	ML102030505
Regulatory History of Design Certification[11]	x	.....	ML003761550

VII. Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Preparation of Comments on the Proposed Amendment to the U.S. ABWR Design Certification

This section contains instructions regarding how interested persons who wish to comment on the proposed design certification amendment may request access to documents containing SUNSI to prepare their comments.

[11] The regulatory history of the NRC's design certification reviews is a package of documents that is available in NRC's PDR and ADAMS. This history spans the period during which the NRC simultaneously developed the regulatory standards for reviewing these designs and the form and content of the rules that certified the designs.

* * * * *

4. Section III of Appendix A to 10 CFR Part 52 is revised to read as follows:

III. Scope and Contents

A.1. Tier 1, Tier 2, and the generic technical specifications in the U.S. ABWR Design Control Document, GE Nuclear Energy, Revision 4 dated March 1997 (GE DCD), are approved for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the generic DCD may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy is available for examination and copying at the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike, Room O-1 F21, Rockville, Maryland. Copies are also available for examination at the NRC Library located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, and the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

2. Tier 1 and Tier 2 information in the ABWR STP Aircraft Impact Assesement Amendment Design Control Document (Revision 3, dated September 23, 2010) (STPNOC DCD), is approved for incorporation by reference by the Director of the Office of the Federal Register under 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the generic DCD may be obtained from the Regulatory Affairs Manager, South Texas Project Nuclear Operating Company, P.O. Box 289, Wadsworth, Texas 77483. A copy of the generic DCD is also available for examination and copying at the NRC PDR, Room O-1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Copies are available for examination at the NRC Library, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, 20852, telephone (301) 415-5610, e-mail LIBRARY.RESOURCE@NRC.GOV. The generic DCD can also be viewed on the Federal Rulemaking Web site http://www.regulations.gov by searching for documents filed under Docket ID NRC-2010-0134 or in the NRC's Electronic Reading Room at

RULE *Federal Register* CITATION]. As provided in 10 CFR 51.31(b)(1)(ii), comments on this EA will be limited to the consideration of SAMDAs as required by 10 CFR 51.30(d).

ENVIRONMENTAL ASSESSMENT

1.0 Identification of the Proposed Action

The proposed action is to issue a rule amending the certified U.S. ABWR design in Appendix A to 10 CFR Part 52. The revised rule would allow applicants to reference both the General Electric (GE) Design Certification Document (DCD) and the STPNOC DCD or to reference only the GE DCD and address the requirements of 10 CFR 50.150 as part of a COL application under 10 CFR Part 52.

2.0 The Need for the Proposed Action

The NRC has long sought the safety benefits of commercial nuclear power plant standardization and early final resolution of design issues. The NRC achieves these benefits by certifying nuclear plant designs. Subpart B to 10 CFR Part 52 allows for certification of nuclear plant designs in the form of rulemaking.

The proposed action is to issue a rule amending 10 CFR Part 52 to revise the certified U.S. ABWR design to meet the requirements of 10 CFR 50.150. The amendment would allow COL applicants to reference both the GE DCD and the STPNOC DCD rather than having to individually address the requirements of 10 CFR 50.150 as part of each COL application referencing the GE DCD. Those portions of the U.S. ABWR design included in the scope of the certification amendment rulemaking would not be subject to further safety review or approval in a COL proceeding. In addition, the design certification rule could eliminate the need to consider SAMDAs individually for any future facilities that reference the certified U.S. ABWR design.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Commissioner Apostolakis

SUBJECT: SECY-10-0142 – PROPOSED RULE: U.S. ADVANCED BOILING WATER REACTOR AIRCRAFT IMPACT DESIGN CERTIFICATION AMENDMENT (RIN 3150-AI84)

Approved XX **Disapproved** _____ **Abstain** _____

Not Participating _____

COMMENTS: **Below** XX **Attached** ___ **None** ___

I approve the proposed amendment to 10 CFR Part 52 for publication in the Federal Register.

The staff should adopt the "branches" alternative to be used in cases for design certifications with multiple suppliers, with consideration given to limited use of the "options" approach in the case of certain limited-scope design certification amendments, as in the case of the South Texas Project amendment to comply with the Aircraft Impact Assessment rule.

SIGNATURE

12/2/10
DATE

Entered on "STARS" **Yes** X **No** ___

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MAGWOOD

SUBJECT: SECY-10-0142 – PROPOSED RULE: U.S. ADVANCED BOILING WATER REACTOR AIRCRAFT IMPACT DESIGN CERTIFICATION AMENDMENT (RIN 3150-AI84)

Approved _____ Disapproved _____ Abstain _____

Not Participating _XX__

COMMENTS: Below ___ Attached ___ None ___

WDM

SIGNATURE

7 December 2010

DATE

Entered on "STARS" Yes _✓_ No ___

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER OSTENDORFF

SUBJECT: SECY-10-0142 – PROPOSED RULE: U.S. ADVANCED BOILING WATER REACTOR AIRCRAFT IMPACT DESIGN CERTIFICATION AMENDMENT (RIN 3150-AI84)

Approved __XX__ Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached __XX__ None ___

SIGNATURE

12/2/10
DATE

Entered on "STARS" Yes __XX__ No ___

Commissioner Ostendorff's Comments on SECY 10-0142

"Proposed Rule: U.S. Advanced Boiling Water Reactor Aircraft Impact Design Aircraft Impact Design Certification Amendment (RIN 3150-AI84)"

I approved the staff's recommendations in SECY 10-0142 and I approve the proposed rule for publication in the *Federal Register*. The staff has proposed a creative approach in reactor design certification rulemaking that affords flexibility to applicants and provides measures to protect proprietary information (trade secrets). Regarding the staff's proposal to treat future amendments to design certification rules using the "branches alternative," I conceptually agree with the alternative but reserve final judgment pending stakeholder feedback. The "branches alternative" appears to allow for one design certification rule with multiple branches without compromising issue resolution and finality of the original certified design.