NRC Responses to NEI Comments on Model COL

Ref. NEI Letter dated June 3, 2009 (ML091671087) and Enclosure (ML091671091)

NEI COMMENT	NRC RESPONSE
Sections 1.A and 1.B. NRC should review Sections 1.A and B. for possible redundancy. The scope of Section 1.A may be sufficiently broad to allow deletion of Section 1.B. Should NRC decide not to omit Section 1.B., we recommend that the NRC review and correct the regulatory citations in that section, as necessary, to ensure accuracy. For example, NEI proposes that the reference to 10 CFR 52.89 be deleted, and references to Sections 52.80 and 52.93 be added.	The NRC agrees with the comment. The NRC agrees that Section 1.A is sufficiently broad to allow deletion of Section 1.B and has deleted Section 1.B.
Section 2.A. It appears text has been omitted from the second sentence, which currently reads: "The facility is located and is described *in the licensee's final safety analysis report …." In fact, the facility description is not located in the FSAR. For clarity, we suggest adding a blank ("_____") as a placeholder for a description of the individual facility's location. This description need not be as comprehensive as the plant location given in the FSAR, but should be sufficiently detailed to avoid any possible confusion concerning the facility location.*	The NRC agrees with the comment. A brief description of the location of the plant is included in the Introduction section of the FSAR and the Generic COL has been updated to include a placeholder [i.e., bracketed text] for the inclusion of a summary description of the facility as provided in the FSAR.
Suggested New Combined License Section 2.B.(6). We propose the addition of a license condition to facilitate the ability of a reactor facility to store irradiated fuel assemblies produced by the operation of another reactor facility operated by the same licensee located at that site. For example, this new provision might provide: *"2.B. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses the licensee:* *(6) Pursuant to the Act and 10 CFR Parts 30 and*	The NRC disagrees with this comment. The NRC will not provide blanket approval for transshipment of spent fuel between licensee units via a generic license condition. For such a condition to be included in the license, the applicant must specifically request such a provision and must demonstrate compliance with all applicable regulations in its application, and the NRC must have reviewed and approved it as part of its SER. Section 2.B.(6) has been rewritten to identify it as a provisional condition and to provide more specificity.

70, to receive, possess and store, but not separate, such byproduct and special nuclear materials [irradiated fuel assemblies containing special nuclear material] as may be produced by the operation of another reactor at the facility site."	
Section 2.C. We propose that the reference to inspections, tests, analyses, and acceptance criteria (ITAAC) in this provision be moved to Section 2.I.; see re-write of Section 2.I. below. In our view, reorganizing these sections to address ITAAC-related provisions as indicated seems more logical and should eliminate redundancy. As opposed to the need for continuing licensee compliance with the Atomic Energy Act of 1954 and Commission regulations and orders, licensee "compliance" with ITAAC is not required for the duration of the license because the ITAAC will expire upon final Commission action in the proceeding. See 10 CFR 52.103(h). We also suggest deleting the comma after "Act" to clarify that licensees must comply only with "applicable" statutory and regulatory provisions. As revised, this section would read: *"2.C. The license is subject to, and the licensee shall comply with, all applicable provisions of the Act and the rules, regulations, and orders of the Commission."*	The NRC agrees with the NEI comment. The reference to ITAAC in Section 2.C has been moved to Section 2.D.(10), Incorporation, to specific that the ITAAC are incorporated into the license. The NRC also agrees with the NEI comment on interpretation of 10 CFR 52.103(h) as well as the removal of the comma to clarify compliance with "applicable" statutory and regulatory provisions. Section 2.C has been revised to reflect these changes.
Section 2.D.(1)(i). Because 10 CFR Part 52 does not require that this license statement be made under oath or affirmation, we propose that the "oath or affirmation" language in Section 2.D.(1)(i) be deleted.	The NRC agrees with the NEI comment. Section 2.D.(1)(i) is now Section 2.D.(3)(i) and has been revised to delete "oath or affirmation". Likewise, other notification requirements associated with the Initial Test Program (ITP) in Section 2.D do not specify "oath and affirmation" (see also Sections 2.D.(4), 2.D.(5), 2.D.(6), and 2.D.(7).

Sections 2.D.(2). For greater clarity, we propose that the NRC revise the introductory clause so that the provision would read as follows: *"2.D.(2). When the licensee notifies the Director of the Office of New Reactors, the licensee is authorized to perform low-power testing and operate the facility at reactor steady-state core power levels, not in excess of [XX] megawatts thermal (5-percent power), in accordance with the conditions specified herein."*	The NRC agrees with the intent of the NEI comment regarding NRC approval to proceed. The NRC has provided alternative language that reflects an understanding that the licensee will not proceed to the low-power testing prior to confirming that pre-criticality and criticality testing results are within the range of acceptable values predicted or otherwise confirm that the tested systems perform their specified functions in accordance with the FSAR and notifying the NRC. See Section 2.D.(4)(iv). Similar language is provided for the other phases of the initial test program (see Sections 2.D.(5)(i), 2.D.(5)(iv), 2.D.(6)(i), 2.D.(6)(iv), and 2.D.(7).
Section 2.D.(3). As discussed at the public meeting, this placeholder provision may apply to facilities other than the first plant, and will, in any event, contain plant-specific information.	The NRC agrees with the intent of the NEI comment. The NRC has included placeholder provisions for the design-specific testing throughout the various phases of the ITP in recognition that not every design includes such first-plant and first-three plant demonstration testing requirements. Because it is difficult to predict which licensees might be the first or first-three to perform such design-specific testing, the NRCs intent when including such design-specific testing is that the condition be in place and the license holder would need to provide suitable justification for not performing the design-specific tests. Details regarding NRC criteria for establishing the applicability and acceptability of such justifications have yet to be determined.
Section 2.D.(4). For greater clarity, we propose that the NRC revise the introductory clause so that the provision would read as follows: *"2.D.(4). When the licensee notifies the Director of the Office of New Reactors, the licensee is authorized to perform power ascension testing and*	The NRC agrees with the intent of the comment regarding NRC approval to proceed. The NRC has provided alternative language that reflects an understanding that the licensee will not proceed to maximum power level testing prior to confirming that power-ascension testing results are within the range of acceptable values predicted or otherwise confirm that the tested systems perform their

operate the facility at reactor steady-state core power levels, not in excess of [XXXX] megawatts thermal (100 percent power), in accordance with the conditions specified herein."	specified functions in accordance with the FSAR and notifying the NRC. See Section 2.D.(6) and 2.D.(7). .
Section 2.D.(5). We propose to modify Section 2.D.(5) to read as follows: *"2.D.(5). The plant-specific Technical Specifications [and Environmental Protection Plan] contained in Appendix B [Appendices B and C, respectively,] of this license are hereby incorporated into this license."* *We recommend deleting the reference to ITAAC incorporation and addressing that concept in Section 2.I along with other ITAAC references. As noted above, because the ITAAC will expire upon final Commission action in the proceeding, the concept of ITAAC incorporation into the COL is of much shorter duration than incorporation of Technical Specifications and is more appropriately addressed in a separate provision. Further, we recommend deleting the reference to antitrust license conditions given the statutory changes in the Energy Policy Act of 2005 relating to elimination of NRC antitrust reviews. Finally, we suggest placing brackets around the reference to the Environmental Protection Plan. Our purpose in doing so is to clarify that NRC has not yet determined that an EPP will be* required *for every COL. As discussed in NEI's February 26, 2009 letter to the NRC commenting on the existing EPP draft, we understand that some, but not all, 10 CFR Part 50 reactor operating licenses have associated site-specific EPPs. For those facilities that have EPPs, some are in the form of license conditions or license*	The NRC agrees with the NEI comment regarding antitrust conditions. The NRC agrees with removing the anti-trust language from this section in light of the changes from the Energy Policy Act of 2005 regarding anti-trust determinations. NRC has also deleted Appendix D – Antitrust Conditions from the license. The NRC disagrees with the NEI comment on ITAAC. The ITAAC, Technical Specifications, and Environmental Protection Plan (EPP) will be incorporated as Appendices to the license. This incorporation is reflected in the revised Section 2.D.(10) and specific appendices to the license have been identified to include the ITAAC, Technical Specifications, and Environmental Protection Plan into the license. Note that the NRC has deleted the TS description as "plant-specific" as that is redundant. The NRC disagrees with the NEI comment on bracketing the EPP incorporation condition. NRC addressed the issue of including an EPP in a license for new reactors in a letter to NEI dated June 9, 2010 (ref. ADAMS Accession No. ML101110205). Section 2.D.(5) has been revised and relocated to Section 2.D.(10).

attachments. In other cases, the EPP has been eliminated and EPP-related commitments are currently addressed by other means (e.g., site procedures). Accordingly, it does not appear that NRC regulations "require" EPPs. (By incorporating the Environmental Protection Plan, COL Section 2.D.(5) would arguably create such a requirement.) We anticipate further interactions with the NRC staff on the EPP.	
Section 2.D.(6) and (7). We suggest that the NRC bracket portions of the text of these two new provisions, in recognition that NRC has not established that license conditions relating to COL holder items and operational program implementation will be needed in all COLs. Specifically, brackets should be placed around Section 2.D.(6) in its entirety. We also propose the use of brackets around the term "the table" in each provision, to indicate that specific information identifying the table has not yet been developed. Brackets should be placed around the reference to Table 13.4-xxx, since that table number may vary from one COL holder to the next. Additionally, we note that neither Section 2.D(6) nor 2.D(7) should be subject to the 24-hour notification provision in Section 2.E—assuming that provision remains in the model COL (see comment on Section 2.E).	The NRC agrees with the intent of the NEI comments. Section 2.D.(6) has been relocated to Section 2.D.(14) and revised to provide a placeholder for site-specific or licensee-specific conditions. Section 2.D.(7) has been relocated to Section 2.D.(11). The NRC agrees that brackets should be placed around the reference to Table 13.4-XXX in this section and has also specified it as [FSAR Table 13.4-XXX]. Regarding the commenter's position on the 24-hour notification provision, see the response to the Section 2.E comments below.
Section 2.D.(8). We recommend that Section 2.D.(8) be deleted in its entirety. With regard to the first paragraph of this section, we do not believe the subject matter (scheduling of NRC inspections on operational programs, and updating that schedule) rises to the level of legal, licensing and nuclear safety concerns typically addressed in NRC license conditions. Nor are we aware of precedent for such provisions under 10 CFR Part 50. Moreover, requiring	The NRC disagrees, in part, with the comment. The NRC disagrees that a license amendment would be required whenever the schedule is modified. The requirement to update the schedule at regular intervals provides a mechanism for schedule modifications without modifying the license. This paragraph has been rewritten to provide clarity and a timeframe for submittal of the schedule. In addition, the NRC disagrees that providing such schedule

the licensee to seek a license amendment whenever such schedules are modified would be unduly burdensome, and could expose licensees to unnecessary enforcement exposure. Rather, we suggest that the NRC address this subject through regulatory guidance (e.g., a RIS or generic letter). We propose Section 2.D.(8) sub-section (a) be deleted because this license condition would duplicate existing regulatory requirements. We propose Section 2.D.(8) sub-section (b) be deleted because it appears to impose new requirements relating to the date of availability of test specifications and procedures and the startup administration manual for the initial test program for NRC inspection. As noted with regard to other scheduler provisions (designed to facilitate inspections) that do not have safety implications, we do not believe this subject needs to be addressed in a license condition. It would likely be more appropriate in the FSAR. Further, as discussed in the NRC meeting, it appears this requirement is already reflected in NRC regulatory guidance, and its inclusion in the COL is thus redundant. NRC Regulatory Guide 1.206 (p. C.I.14-3), NRC Regulatory Guide 1.68 (p. 8) and NUREG-0800 (SRP 14.2, p. 14.2-6) all state that test procedures should be provided to the NRC 60 days prior to use; these sources are silent with respect to the timing of submission of the test specifications and startup administration manual.	information duplicates existing regulatory requirements. The NRC agrees, in part, with the comment. The NRC agrees that paragraph 2.D.(8)(a) should be deleted because this requirement exists in 10 CFR Part 50, Appendix E, Section V and does not need to be repeated in the COL. The NRC does not agree that paragraph 2.D.(8)(b) should be deleted. The guidance provided in NRC regulatory guides and standard review plans does not constitute requirements specified either in regulations or as a condition to a combined license. Section 2.D.(8) has been modified and relocated to Section 2.D.(12).
<u>Section 2.E.</u> NEI believes that this reporting requirement is overly broad, confusing and unnecessary, and should be deleted. A key concern is the expansiveness of the provision, which would require submittal of a report within 24 hours of any violation of the requirements of Section 2.D. of the license. Section 2.D., in turn, requires licensee compliance with "the conditions set forth in 10 CFR Chapter	The NRC agrees with the intent of the NEI comment but believes it should remain as a condition with more limited application, specifically to Sections 2.D.(3)(ii), 2.D.(4), 2.D.(5), 2.D.(6), and 2.D.(7), and 2.D.(8) if any specific tests specify a power level, because the reporting of violations of licensed power limits is not covered in any other regulation. The NRC has provided revised language for Section 2.E

1, now or hereafter applicable, "as well as with the specific conditions set forth in Section 2.D,(1)-(8). Accordingly, this license condition can be read as requiring a 24-hour report for any violation of any NRC regulation! Given its potential scope, this license condition would duplicate existing NRC reporting requirements in some areas and create numerous new reporting requirements in other areas. Additionally, no legal or regulatory basis has been provided for the imposition of new reporting requirements outside of the NRC rulemaking process. Finally, the reliance in this provision on 10 CFR 50.72 and 50.73 provides another source of confusion. If, as seems plausible, NRC intends that licensees follow the administrative provisions of Section 50.72 and 50.73 (as to mode of reporting, for example), the provision should so state. Any more expansive reading would appear to broaden the reach of 10 CFR 50.72 and 50.73 beyond the current application of those regulations. Should it decide not to delete Section 2.E., NRC could narrow the scope of this provision somewhat by adding a prefix such as: "Except as otherwise specified in the Technical Specifications, the Environmental Protection Plan, or Commission regulations, the licensee shall report…" However, the scope of the reporting requirements would remain unnecessarily broad and duplicative.	and included it in 2.D.(9) and revised the language to acknowledge that not all the requirements may be applicable to notifications while implementing the initial test program. Because of the addition of new conditions at 2.D.(1) and 2.D.(2), the appropriate references are to Sections 2.D.(3)(ii), 2.D.(4), 2.D.(5), 2.D.(6) and 2.D.(7), and 2.D.(8) if any specific tests specify a power level. The design-specific testing section was moved to follow the maximum power level testing section.
<u>Section 2.F.</u> We suggest that the NRC revise this provision for greater clarity, as follows: *"2.F.(1) The following exemptions from any part of a referenced design certification rule are authorized by 10 CFR 52.93 and are hereby granted.* *[(1) LISTING OF EXEMPTIONS FROM DESIGN*	The NRC agrees is principle with this comment and has revised Section 2.F. In addition, for completeness this section has revised to include placeholders for: • Exemptions from a referenced design certification rule (DCR)

CERTIFICATION RULE (DCR)]" *"2.F.(2) The following specific exemptions are authorized by law in 10 CFR 52.7 and will not endanger life or property or the common defense and security. Certain special circumstances are present and these exemptions are otherwise in the public interest. Therefore, these exemptions are hereby granted.* *[(2) LISTING OF EXEMPTIONS WHICH ARE OUTSIDE THE SCOPE OF DCR]"*	• Exemptions granted in the DCR • Exemptions outside the scope of the referenced DCR (i.e., for site-specific of licensee specific situations) • Variances from a referenced early site permit • Exemptions granted in a referenced early site permit
<u>Section 2.H.</u> *Industry needs to see a more definitive list in order to provide meaningful input on this provision.*	The NRC understands the commenter's position but believes that this section must be included to identify the timing for applicability of operating requirements such as technical specifications. The NRC has not identified, on a generic basis, any operational requirements other than technical specifications but prefers to leave the provisions as a placeholder in the generic COL. This condition has been moved to Section 2.D.(13).
<u>Section 2.I.</u> *NEI recommends that this license condition be revised to state as follows:* *"*The inspections, tests, analyses and acceptance criteria (ITAAC) contained in Appendix A are hereby incorporated into this license. *After the Commission has made the finding required by 10 CFR 52.103(g), the ITAAC do not constitute regulatory requirements either for licensees or for renewal of the license; except for specific ITAAC, which are the subject of a Section 103(a) hearing, and which will expire upon final Commission action in such proceeding."*	The NRC disagrees with the NEI comment. The NRC has deleted Section 2.I because it believes that the condition in Section 2.I is duplicative of existing regulations in 10 CFR 52.103(h) that provide "sunsetting" provisions for ITAAC incorporated in a license. The NRC must incorporate the EPP into the license and has maintained Appendix C for this purpose. The NRC addressed the issue of including an EPP in a license for new reactors in a letter to NEI dated June 9, 2010 (ref. ADAMS Accession No. ML101110205).

The [un]italicized text is taken from existing Section 2.C. See also the comment and rewrite of Section 2.C. • *Delete Appendix D from the list of appendices at the end of the document.* • *Place Appendix C reference in brackets, consistent with comments on Section 2.*	