

March 4, 2011

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 FEBRUARY 17, 2011, PUBLIC MEETING WITH
INDUSTRY'S NEW PLANT WORKING GROUP ON COMBINED
LICENSE APPLICATIONS

On February 17, 2011, 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. ML110200296. 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. The NRC would also 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. Changes During Construction Update
2. Inspection, Test, Analysis, and Acceptance Criteria (ITAAC) Maintenance Proposed Rulemaking Update
3. Model Combined License (COL) Update
4. Status of the Commission Staff Requirements Memorandum (SRM) on Construction Reactor Oversight Program
5. New Reactors Status Update

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Discussion Topics:

Changes During Construction Update (E. Libby)

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

1. Determine the activities, if any, that can be performed by licensees during construction while the NRC is reviewing the 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 10 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 design certification rule (DCR) (construction & operation).

Mr. Libby discussed how changes during construction would be conducted using a modified license amendment request (LAR) process. During the period from issuance of a COL until the 10 CFR 52.103(g) finding, there will be a license amendment "acceptance" process. Under this license amendment "acceptance" process, NRO staff performs an initial acceptance review predominantly using a criterion of inspectability. Following the NRC LAR "acceptance" evaluation of the proposed plant change or proposed modification of a structure, system or component, and evaluation of the licensee's submitted schedule for installation and testing, the NRC will issue an acceptability decision reflecting whether or not the NRC has any objection to the licensee proceeding, at its own risk, with the proposed plant change or proposed modification installation and testing pending the outcome of the NRC's detailed technical review of the requested amendment. The timeframe for issuance of the acceptability decision will be established in consideration of the schedule expectations of the licensee with the goal of minimizing delays in their construction plan schedules. An NRO acceptability decision is not a pre-approval of the LAR, nor does it imply any NRC approval of the LAR. In addition, there is one LAR review and decision process, 10 CFR 2.101. The Preliminary Acceptability Review (PAR) for inspectability is an elective part of that process, contained within a condition of the license, by which a licensee may request a decision from the NRC that there is no objection to the licensee proceeding, at its own risk, with the proposed plant change or proposed modification installation and testing pending the outcome of the NRC's detailed technical review of the requested amendment.

The licensee PAR request should contain a description of the proposed plant change or modification; the timeframe which the licensee requests notification from the NRC of its PAR decision; a proposed no significant hazards determination; the proposed environmental exclusion category; inspection schedule changes identifying limited timeframe and one time

availability for inspection; and any changes, additions, deletions of the ITAAC. Mr. Libby stated that a template for the licensee PAR request will be contained in Section 4.6 of NEI 96-07, Appendix C, "Guideline for Implementation of Change Control Processes for New Nuclear Power Plants Licensed Under 10 CFR Part 52." The PAR request excludes the technical attributes contained within the LAR. Technical details relevant to the inspection of the LAR will be available in the detailed design package maintained by the licensee.

Mr. Libby added that at the 23rd Annual Regulatory Information Conference, NRO will host a technical session that includes a presentation on changes during construction. This session is scheduled to be held on Thursday morning, March 10, 2011.

Ms. Marilyn Kray, Exelon, expressed her appreciation for Mr. Libby's summary and acknowledged the practical approach to the inspectability issue. Ms. Kray also expressed her gratitude to the staff who worked through these issues to define an effective change process. Ms. Kray expressed uncertainty in what information need to be included in the PAR and how the information provided for the environmental categorical exclusion and the no significant hazards assessment is used. Mr. David B. Matthews, Director of NRO/DNRL, responded that any submitted LAR, whether accelerated or not, should fall within the environmental categorical exclusion. Otherwise, an environmental assessment would be required before proceeding with the LAR. In addition, the licensee must determine whether the proposed change involves a no significant hazards consideration. Meeting attendees generally agreed that exceeding the no significant hazards consideration threshold was probably less likely. Although if the threshold is exceeded for either case, Mr. Matthews stated that the LAR would not move forward within the PAR process. The NRC would complete the LAR review and decision prior to the licensee proceeding with the installation of the proposed plant change or modification requiring a license amendment.

Mr. Steve Byrne, SCANA, asked what group within NRC is responsible for performing the acceptability review/decision. Mr. Matthews responded that guidance for LARs submitted between the receipt of the COL and the § 103(g) finding is being developed by NRO personnel. The PAR review is an integrated review between NRO and Region II personnel. The NRC point of contact is the NRO project manager. Mr. Byrne also asked how fast the NRC would respond to a PAR. Mr. Matthews responded that the NRC will respond on the schedule requested within the submitted PAR and LAR to support the licensee's construction schedule.

Mr. Russell Bell, NEI, asked if a LAR was submitted that raised a new environmental issue would the NRC take more time to review the LAR and would the NRC consider proceeding with a preliminary acceptability review if an environmental impact analysis was pending. Mr. Matthews responded that the NRC could not proceed with the LAR preliminary acceptability review if the LAR introduced an unassessed environmental impact.

ITAAC Maintenance Proposed Rulemaking Update (N. Gilles)

Ms. Nanette V. Gilles (NRO/DNRL/NRGA) was introduced to provide an update on the ITAAC Maintenance proposed rulemaking submitted to the Commission on August 30, 2010 (ADAMS Accession No. ML101440146). Ms. Gilles stated that the Commission SRM, dated February 4, 2011 (ADAMS Accession No. ML110350185) reduced the number of ITAAC post-closure notification requirements from four to two. The two remaining notifications are the

Supplemental ITAAC Closure letter and the All ITAAC Complete letter. Details of how and when notifications are to be submitted will be included in a proposed revision to Regulatory Guide (RG) 1.215, "Guidance for ITAAC Closure Under 10 CFR Part 52." The staff will return the revised proposed rule to the Commission for information 30 days before it is delivered to the *Federal Register* for publication. Ms. Gilles stated that the proposed rule documents are being revised to comply with the Commission direction and that these revised documents will be submitted to the Commission by March 30, 2011. The NRC will send the proposed rule *Federal Register* notice (FRN) to the *Federal Register* for publication 30 days later. Ms. Gilles also stated that the proposed revision to RG 1.215, endorsing NEI 08-01, Revision 4, "Industry Guideline for the ITAAC Closure Process Under 10 CFR Part 52," (ADAMS Accession No. ML102010051) is being revised consistent with the SRM. The NRC plans to publish for public comment the proposed RG at the same time as the proposed rule.

Mr. Bell, NEI, stated that the NEI 08-01 industry guideline is ready, although the industry guideline may require conforming changes.

Model Combined License Update (E. Oesterle)

Mr. Eric R. Oesterle (NRO/DNRL/NRGA) was introduced to present an update on the model COL. Mr. Oesterle stated the staff held a public meeting on February 16, 2011, (ADAMS Accession No. ML110420093) to discuss the updated model COL and NRC responses to the NEI comments contained in their June 2009 letter (ADAMS Accession No. ML110410311). Mr. Oesterle stated that the meeting was productive and that the staff received constructive feedback on the proposed model COL. The following four key messages were delivered during this meeting:

1. The NRC is shifting focus to preparation of the initial drafts for the first few COLs (in parallel with updating the model COL).
2. The staff does not plan to hold additional public meetings to further develop the model COL.
3. The staff will incorporate input and feedback from the public meeting into development of the initial draft COLs.
4. A proposed COL will be included for information as an attachment to the Commission paper provided to the Commission to support each mandatory hearing.

Mr. David Lewis, PSEG, stated that he saw the value in developing the generic model COL. However, in yesterday's presentation there was a placeholder in the model COL in which 10 CFR 50.109 backfitting provisions would expire if the requirements of 10 CFR 52.103(g) are not met within a specified period after the COL is issued. Mr. Jerry N. Wilson (NRO/DNRL/NRGA) responded that the 10 CFR Part 50 two step licensing process had a construction permit (CP) and an operating license (OL). Under the Part 50 licensing process, backfit protection was only afforded to the OL holder upon issuance of the license and not to the CP holder. The 10 CFR Part 52 licensing process combines the CP and the OL into a COL. The original premise for 10 CFR Part 52 licensing process was that the COL holder would immediately begin construction on receipt of a COL and that the backfit protection is applied on this basis. What is occurring is different from what was assumed in that some COL applicants are planning to wait for a period of years after receiving the COL before beginning construction. This scenario was not anticipated during Part 52 rulemaking. To address this issue, the NRC

plans to add a license condition to each COL regarding the sunset of the § 50.109 backfit provision.

Mr. Bell, NEI, agreed that this sunset provision placeholder works, but that it is more appropriate to add this requirement through rulemaking rather than as a license condition. Mr. Matthews responded that the issue is similar to the changes during construction issue in that this issue could either have been addressed through rulemaking, which may have impacted COL construction schedules, or through the proposed LAR process. The proposed license condition provides a means to address this issue. Mr. Matthews stated that similar to a CP holder who requests for a permit extension when their permit is about to expire, a COL holder could request a license amendment to extend the § 50.109 provision period, if needed. The staff plans to provide an opportunity for the COL applicant to review the proposed COL before the COL is issued. Mr. Matthews also clarified that the NRC will issue a separate COL for each unit at a multi-unit facility.

Status of the Commission Staff Requirements Memorandum on Construction Reactor Oversight Program (L. Dudes)

Ms. Laura A. Dudes, named Director of the Division of Construction Inspection and Operational Programs (NRO/DCIP) (effective February 28, 2011), stated that Commission paper, SECY-10-0140, "Options for Revising the Construction Reactor Oversight Process Assessment Program," (ADAMS Accession No. ML102500499) is still being considered by the Commission and a SRM has not been issued.

Mr. Bell, NEI, stated that the NPWG looks forward to working with Ms. Dudes just as the NPWG members previously worked with Mr. Glenn M. Tracy, the former Director of NRO/DCIP. Mr. Bell then asked whether Ms. Dudes has formulated any lessons learned from the Simulated ITAAC Closure and Verification Demonstration Program. Ms. Dudes responded that a key lesson learned concerned communication in that two people may read an ITAAC commitment in two different ways. The demonstration project highlighted this issue and Ms. Dudes believes that additional tabletop exercises would be beneficial to work through this issue to finalize the process. Mr. Bell agreed that more tabletop exercises are needed. Mr. Bell also agreed that the demonstration project was helpful in highlighting some areas for improvement. Mr. Bell anticipates that the next tabletop exercise will proceed more smoothly.

New Reactors Status Update (D. Matthews)

Mr. David B. Matthews, Director of NRO/DNRL, stated that Commission paper, SECY-10-0121, "Modifying the Risk-Informed Regulatory Guidance for New Reactors," (ADAMS Accession No. ML102430197 (package)) is still being considered by the Commission and an SRM has not been issued. Mr. Matthews continued by stating that the Commission approved the publication for public comment of a proposed rulemaking to certify an amendment to the Advanced Passive 1000 (AP1000) standard plant design (ADAMS Accession No. ML110400358). Commission voting on Commission paper, SECY-11-0006, "Proposed rule – Economic Simplified Boiling-Water Reactor Design Certification," (ADAMS Accession No. ML102220172) is underway and the issuance of a SRM is expected shortly. In addition, the U.S. Advanced Boiling Water Reactor (ABWR) Aircraft Impact Design Certification Amendment proposed rule was published in the *Federal Register* on January 20, 2011 (76 FR 3540).

Mr. Matthews distributed a handout titled, "New Reactor Licensing Applications: Schedules by Calendar Year," (ADAMS Accession No. ML110630028) to discuss when DCRs and COLs are scheduled to be issued. NRC's review of the schedule for the ABWR design certification rulemaking and its associated COLs is in progress and will be completed in the next few weeks.

In addition, Mr. Matthews mentioned that the Commission recently made public SRM-SECY-10-0082, "Mandatory Hearing Process for Combined License Application Proceedings Under 10 CFR Part 52," (ADAMS Accession No. ML103570203). This document lays out the framework for how the agency will conduct mandatory hearings on the first COL applications for nuclear power reactors. Mr. Matthews also referred meeting attendees to NRC Press Release No. 11-026, dated February 16, 2011, which is publicly available on the NRC Web site. Mr. Matthews noted that the SRM contains several milestones, which need to be completed before a COL applicant will understand the mandatory hearing schedule and content. Specifically, Mr. Matthews stated that the Internal Commission Procedures entitled "Conduct of Mandatory Hearings on Applications for Combined Licenses" are not issued. Once these procedures are approved, they will be provided to external stakeholders. In addition, a process and schedule will be developed to complete the mandatory hearing and issue the final Commission decision within 4 months from the issuance of the later of the Final Safety Evaluation Report (FSER) or the Final Environmental Impact Statement (FEIS) for the COL.

Mr. Bell, NEI, stated that many Commission procedures are available on the NRC Web site and asked if that would be where an applicant would go to find them. Mr. Matthews responded that the Commission directed the staff in the SRM to provide the Commission procedures to the COL applicant.

Mr. Byrne, SCANA, asked several questions related to the timing of the mandatory hearing including when the 4-month period begins and what is the duration of the mandatory hearing. Mr. Matthews responded that the 4-month window begins when the staff submits the Commission paper to the Commission. This paper provides a roadmap for the Commission to perform their review. The NRC will publish a notice for the mandatory hearing to invite interested government entities, including any interested State, local government body, or affected, federally-recognized Indian Tribes, to submit written statements to the Commission. The hearings will begin upon completion of the staff's FEIS and FSER for the COL. Mr. Matthews added that guidance for the duration of the mandatory hearings would be contained in the Commission procedures. The final decision from the mandatory hearing will take the form of a Commission adjudicatory decision in which the Commission affirms the sufficiency of the staff's review to support the findings set forth in 10 CFR Sections 52.97 and 51.107 in an SRM. The SRM authorizes the staff to make the regulatory findings and issue the COL(s). Mr. Matthews clarified that the Office Director of NRO would issue the COL approximately 10 days after the SRM was issued.

Industry identified issues

Mr. Byrne, SCANA, Chairman of the NPWG, thanked the NRC staff who travelled to the meeting and those who participated via conference phone.

In response to questions from Mr. Byrne, SCANA, and Mr. Lewis, PSEG, regarding the fiscal year (FY) 2011 continuing resolution and its impact on NRC resources, Mr. Matthews

responded that the NRC spend rate during the continuing resolution is consistent with the FY 2010 approved budget. Under the continuing resolution, the NRC receives budget allowances at the FY 2010 budget allocation, presenting a challenge particularly for contracted work. Mr. Matthew stated that NRO's budget request for FY 2012 remains level even though the work requested by applicants continues to expand.

Mr. Bell, NEI, requested an update on the status of the proposed rule on the Requirements for Access Authorization and Physical Protection for Nuclear Power Plant Construction. Mr. Schofer responded that Commission paper, SECY-10-0137, "Proposed Rule: Requirements for Access Authorization and Physical Protection for Nuclear Power Plant Construction" was submitted to the Commission on October 21, 2010, (ADAMS Accession No. ML101900320 (package)) and the proposed rule is under consideration by the Commission. The proposed rule package and Chairman Jaczko's vote and comments (ADAMS Accession No. ML103280077) are publicly available. Similar to the schedule outlined for the ITAAC Maintenance proposed rule, after the SRM is issued, the staff would make any conforming changes to the proposed rule package and would then send the proposed rule FRN to the Office of the Federal Register for publication. Mr. Schofer also stated that the proposed draft RG will be published at the same time as the proposed rule.

Mr. Pete Ivey, Southern Nuclear, asked whether the COL applicants can expect generic guidance to be issued on how the licenses for byproduct material under 10 CFR Part 30, for source material under 10 CFR Part 40, and for special nuclear material under 10 CFR Part 70, are coordinated with the COL issued under 10 CFR Part 52. Mr. Wilson responded that these special licenses are issued with the COL. The information that each COL applicant needs to submit to the NRC was communicated to the Vogtle, V.C. Summer, South Texas, and Comanche Peak projects. Mr. Bob Kitchen, Progress Energy, expressed that Levy County will be the next application in the queue to request these material licenses and asked whether guidance would be issued before the review of the Levy County application is completed. Mr. Wilson replied that if there is a concern, contact the NRO project manager for the Levy County application for staff assistance with these issues. Mr. Matthews also commented that the staff's ability to issue guidance before the early COLs would require it will be a challenge.

Mr. Chuck Pierce, Southern Nuclear, asked whether the COL applicants should expect a license condition related to the Part 30/40/70 license. Mr. Oesterle responded that the staff is currently working through these issues with Vogtle and a license condition could result from this review.

Mr. Bell, NEI, asked about the list of potential new generic license conditions that was presented at the February 16, 2011, public meeting during the discussion of the updated model COL. Mr. Oesterle responded that Mr. Bell was referring to a separate handout provided with the public meeting information package (ADAMS Accession No. ML110420142). This separate handout included license conditions proposed by several COL applicants that appeared to have generic applicability. This list was presented during the February 16, 2011 public meeting to gather feedback from the attendees for inclusion in the model COL as generic conditions.

Mr. Byrne, SCANA, stated that when NEI talks to members of Congress, they inform them that the NRC has adequate resources to perform the DCR and COL reviews. Based on today's discussions, there may be pinch points where the NRC lacks sufficient resources.

Mr. Matthews responded that the NRC has assigned its resources to support and maintain the publicly available schedules. NRO assigns its resources to design certification applications and COLAs for which the applicant is committed to build. As previously discussed, the work required to certify designs and issue COLs continues to expand based on application quality issues, designs not complete, and design concerns or are delayed because applicants are unable to meet agreed upon review schedules and regulatory requirements. Mr. Matthews added that although resources are focused on working on these areas first, the NRC is making progress on all its applications and projects. Further, the resources needed for COL and DCR reviews are different and do not necessarily affect progress on the other.

Mr. Byrne, SCANA, also asked whether the NRC has the necessary resources to perform reviews on small modular reactors (SMRs). Mr. Matthews replied that SMR review resources are included in the NRO's budget with support from the Office of Nuclear Regulatory Research to resolve first-of-its-kind issues. Mr. Byrne continued with a question on whether the Department of Energy's (DOE's) goal of licensing an SMR by 2018 is consistent with the NRO's budget and resource plan. Mr. Matthews responded that Mr. Michael E. Mayfield, Director of Advanced Reactor Program, is in constant communication with DOE regarding their expectations.

Public Comments

Mr. Ed Lyman, Union of Concerned Scientists, asked whether the NRC was aware of any lessons learned from the Chinese AP1000 construction program in which the Chinese built the modules in the wrong orientation and overstressed portions of the module as the module was rotated to the vertical configuration required for installation. Ms. Dudes responded that NRC Region II and the NRO project office have a strong relationship with the Chinese, so that any lessons learned from their AP1000 construction program will be incorporated into our construction inspection program. Mr. Matthews agreed to take this issue back and provide a more detailed response at a subsequent NPWG meeting. A reference to this issue is contained on page 19 in the April 8, 2010, Thomas Reuters StreetEvents transcript for the SCE&G – SCANA Corporation Analyst Meeting (available at http://www.scana.com/NR/rdonlyres/C3E3395D-111F-4BED-8EED-A2A4AD07E76B/0/SCGTranscript20100408T12_00.pdf).

Mr. Steven Dolley, Platts, asked whether the NRC meeting with the COL applicant to review the COL before it is issued, is a public meeting and, if it is not, would there be publicly available documentation of what transpired. Mr. Matthews apologized for not being clear that this is a non-public meeting for the applicant's and NRC's General Counsel to review the COL before it is issued by NRO. The review is limited to nonsubstantive changes such as references, grammar, typographical errors, etc.

W. Burton

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

Enclosures:

1. Attendance List
2. New Reactor Licensing Applications:
Schedules by Calendar Year

cc w/encl: See next page

W. Burton

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

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2. New Reactor Licensing Applications:
Schedules by Calendar Year

cc w/encl: See next page

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ADAMS Accession No.: ML110601056 (package) *via e-mail NRC-001

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DATE	02/24/11	03/03/11	03 /04/11

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

February 17, 2011

Attendance List

Name	Organization
Fred Schofer	NRC/NRO/DNRL
David Matthews	NRC/NRO/DNRL
Laura Dudes	NRC/NRO/DCIP
Nanette Gilles	NRC/NRO/DNRL
Earl Libby	NRC/NRO/DNRL
Mark Lombard	NRC/NRO/DSRA
Eric Oesterle	NRC/NRO/DNRL
Jerry Wilson	NRC/NRO/DNRL
Steve Byrne	SCANA
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Russ Bell	NEI
Mark Harvey	NEI
Greg Gibson	Unistar
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Pete Ivey	SNC
Chuck Pierce	SNC
Marilyn Kray	Exelon
Patricia Campbell	GEH
David Harwood	DTE
David Lewis	PSEG
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Jeannie Rinckel	NEI
Bob Schrauder	TANE
Frank Gillespie	MNES
Bill Maher	FPL
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Ron Jones	Duke Energy
Mark Giles	Dominion
Ira Owens	Sargent & Lundy
Bob Kitchen	Progress Energy
Dan Breig	Southern California Edison
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(Revised 01/24/2011)

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