

PR 52
(76FR10269)



NUCLEAR ENERGY INSTITUTE

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DOCKETED
USNRC

May 10, 2011

May 10, 2011 (4:30 pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Ms. Annette L. Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Rulemakings and Adjudications Staff

Subject: Comments on AP1000 Design Certification Amendment; Docket ID NRC-2010-0131;
Federal Register Notice 76 FR 10269

Project Number: 689

Dear Ms. Vietti-Cook:

The Nuclear Energy Institute (NEI)¹, on behalf of the nuclear industry, is pleased to provide these comments in response to the subject *Federal Register* Notice 76 FR 10269, *AP1000 Design Certification Amendment*.

As described in the proposed rule published for comment on February 24, 2011, the purpose of this amendment is "to replace the combined license (COL) information items and design acceptance criteria (DAC) with specific design information, address the effects of the impact of a large commercial aircraft, incorporate design improvements, and increase standardization of the design." The applicant for the amendment to the certified design is Westinghouse Electric Company LLC (Westinghouse). Upon NRC rulemaking approval of the amendment to the AP1000 design, an applicant seeking an NRC license to construct and operate a nuclear power reactor using the AP 1000 design need not demonstrate in its application the safety of the certified design.

¹NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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On April 6, 2011, a "Petition to Suspend AP1000 Design Certification Rulemaking Pending Evaluation of Fukushima Accident Implications on Design and Operational Procedures and Request for Expedited Consideration" (the "Petition") was filed with the Commission. Petitioners asked the Commission to "exercise its supervisory authority to order the immediate suspension of any AP1000-related rulemaking while it conducts a thorough and open investigation of the implications of the Fukushima accident." Petitioners sought expedited consideration because the comment period for the rulemaking ends on May 10, 2011.

In brief, both Commission precedent and sound public policy support the NRC's approach of *continuing its ongoing licensing and design certification reviews and associated decision making processes*. On this important point, see the May 2, 2011, "NRC Staff Answer to Emergency Petition to Suspend All Pending Reactor Licensing Decisions and Related Rulemaking Decisions Pending Investigation of Lessons Learned from Fukushima Daiichi Nuclear Power Station Accident. "In that filing, the NRC Staff argued that the April 19, 2011, Emergency Petition should be denied because (among other reasons), the Petitioners failed to meet Commission requirements to suspend or stay all licensing decisions and related rulemakings. "The Petition simply has not provided an adequate basis to support such emergency relief . . ." noted the NRC Staff (NRC Staff Answer, p.1).

On March 21, 2011, the Commission announced the creation of a Task Force specifically to study lessons learned from the March 2011 earthquake, tsunami and resulting nuclear emergency at the Fukushima Daiichi nuclear plant. That NRC Task Force is taking appropriate steps to identify the near-term and long-term lessons from that event and apply those lessons, as appropriate, to licensed reactors and as part of pending licensing and design certification reviews. Conducting the agency's comprehensive review of the implications of the Fukushima Daiichi Nuclear Power Station accident in Japan in parallel with ongoing Commission activities is appropriate.

Additionally, the Atomic Energy Act and NRC regulations provide for public participation in connection with any future agency actions that may result from the evaluation of lessons learned from the Fukushima event. To the extent a petitioner believes that new information from the lessons-learned reviews is relevant to any particular NRC decision, existing NRC regulations provide adequate processes for seeking relief. However, consistent with the actions taken after Three Mile Island and September 11, 2001, the Commission should deny the Petitioners' request to suspend the ongoing AP1000 design certification rulemaking. Any regulatory action or environmental analyses necessitated by the Fukushima accident will be addressed in due course, following established administrative procedures.

In sum, this Petition, to our knowledge, provides no viable basis for asking the Commission to take the extraordinary step of suspending or extending the rulemaking. The additional remedy sought the agency's "comprehensive review;" (see Petition, p. 23) is already underway and will be provided by the NRC Task Force. Thus, the Commission should deny the relief requested by Petitioners.

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These and other reasons supporting NEI's opposition to Petitioners' request are discussed in more detail in NEI's May 2, 2011, "Brief of the Nuclear Energy Institute as *Amicus Curiae* in Opposition to the Emergency Petition to Suspend All Pending Reactor Licensing Decisions and Related Rulemaking Decisions," which was filed with the Commission.

If you have any questions, please do not hesitate to contact me at or Kimberly Keithline at 202.739-8121 or kak@nei.org.

Sincerely,



Russell J. Bell

c: Mr. William F. Burton, NRO/DNRL/DDIP/NR, NRC
Mr. Earl R. Libby, NRO/DNRL/DDIP/NR, NRC
NRC Document Control Desk

Rulemaking Comments

From: BELL, Denise [dxb@nei.org] on behalf of BELL, Russ [rjb@nei.org]
Sent: Tuesday, May 10, 2011 2:52 PM
Subject: Comments on AP1000 Design Certification Amendment; Docket ID NRC-2010-0131; Federal Register Notice 76 FR 10269
Attachments: 05-10-11_NRC_Comments on AP1000 Design Certification Amendment.pdf

May 10, 2011

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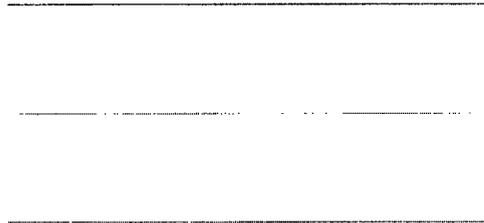
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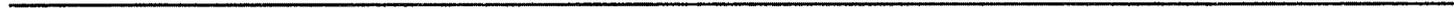
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