



NUCLEAR ENERGY INSTITUTE

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Russell J. Bell
DIRECTOR
NEW PLANT LICENSING
NUCLEAR GENERATION DIVISION

July 26, 2011

Ms. Annette Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Attn: Rulemakings and Adjudications Staff

Subject: NEI Comments on Requirements for Maintenance of Inspections, Tests, Analyses and Acceptance Criteria, Proposed Rule, 76 *Fed. Reg.* 27925 (May 13, 2011), Docket ID NRC-2010-0012

Project Number: 689

Dear Madam Secretary:

The Nuclear Energy Institute (NEI)¹ is pleased to submit the attached comments on the subject rulemaking to amend 10 CFR §§ 2.340 and 52.99 concerning verification of plant construction activities through inspections, tests, analyses and acceptance criteria (ITAAC) under an NRC combined license (COL).

Subject to the comments provided in the attachment, we agree that the proposed performance-based rule, together with regulatory guidance proposed separately on the details and timing of the required notifications, will effectively achieve the stated objectives of the rule. These objectives are to ensure that 1) the public has sufficient information to request a hearing on whether acceptance criteria have been or will be met, and 2) that the agency has sufficient information to make the Section 52.103(g) finding that all ITAAC are met.

¹ NEI 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.

Template - SECY-067

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Ms. Annette Vietti-Cook

July 26, 2011

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We would like to highlight two comments provided in the attachment for your particular attention. First, we recommend the Commission take this opportunity to modify Section 52.99(e) to incorporate language concerning the focus of ITAAC verification by the NRC staff that was previously approved by the Commission as fully consistent with Part 52 and included in each design certification rule issued to date. A simple modification is proposed to Section 52.99(e) that would address the lack of this important language in the new template that NRC plans to use for future design certifications. We believe making this change would be analogous to changes the NRC has proposed in this rulemaking to conform Section 52.99 to Section 52.103 and the AEA. The proposed modification would not conflict with any of the revisions proposed in this rulemaking. See attached Comment #1.

Second, we recommend that the NRC revisit the proposed rule changes and Supplementary Information concerning Section 2.340(j). We believe that in developing this part of the rulemaking, the staff may not have adequately considered the effect of Section 52.103(c), under which the Commission may allow a period of interim operation pending completion of a hearing granted on one or more ITAAC provided there is reasonable assurance of adequate protection to the public health and safety. See attached Comment #11.

NEI is providing comments under separate cover on the companion Regulatory Guide (DG-1250) to this performance-based proposed rule (76 Fed. Reg. 27,924). The draft regulatory guide describes methods that the NRC staff considers acceptable for use in documenting the completion of ITAAC and making the required notifications.

If you have any questions concerning this letter or the attached comments, please contact me.

Sincerely,



Russell J. Bell

Attachment

c: Ms. Laura A. Dudes, NRO/DCIP, NRC
Mr. William F. Burton, NRO/DNRL/DDIP/NR, NRC
Mr. Earl R. Libby, NRO/DNRL/DDIP/NR
Stephen G. Burns, Esq., OGC, NRC
Michael A. Spencer, Esq., OGC/GCHEA/AGCNRP, NRC

1. General Comment on Section 52.99

The ESBWR design certification rule will be the first to eliminate Section IX on ITAAC. NEI generally does not object to consolidating ITAAC provisions in the Part 52 rule, provided there is no loss of clarity and that no substantive provisions are lost or modified in the process. In this case, however, elimination of DCR Section IX will result in the loss of an important ITAAC provision that was not included in the 2007 revision to Part 52. We believe this loss can be corrected with a simple change to Section 52.99.

After significant discussion in 1996 concerning factors that are important in verifying that the acceptance criteria of the ITAAC are met, the NRC agreed to add clarifying language as discussed in the Supplementary Information accompanying the ABWR design certification rule (62 FR 25813):

... the Commission has decided to add a provision to Section X.B.1 of this appendix, which was requested by NEI. This provision requires the NRC's findings (that the prescribed acceptance criteria have been met) to be **based solely on** the inspections, tests, and analyses. The Commission has added this provision, which is fully consistent with 10 CFR Part 52, with the understanding that it does not affect the manner in which the NRC intends to implement 10 CFR 52.99 and 52.103(g), as described above. [Emphasis added.]

The highlighted words ensure a focus on the terms of the ITAAC when determining whether acceptance criteria are met. Importantly, NRC and industry agreed that these words do not alter the fact that a QA/QC deficiency may be considered when the deficiency is material to the determination that acceptance criteria are met. This provision has been included in each design certification rule in paragraph IX.B.1. Because this language does not exist in the Part 52 rule, this important provision is lost when eliminating Section IX from the ESBWR (and future) design certification rules.

Recommendation:

So that the clarification intended by the Commission is preserved, NEI suggests that the NRC consider relocating the clarification in Section IX.B.1 of the design certification rules to 10 CFR 52.99(e) as follows:

(e) The NRC shall ensure that the prescribed inspections, tests, and analyses in the ITAAC are performed.

(1) At appropriate intervals until the last date for submission of requests for hearing under § 52.103(a), the NRC shall publish notices in the **Federal Register** of the NRC staff's determination ~~of the successful completion of~~ that inspections, tests, and analyses contained in the license have been successfully completed and, based solely thereon, that the prescribed acceptance criteria are met.

We believe this simple change will preserve the clarity and substance of existing design certification rule requirements pertaining to ITAAC as intended by the Commission. Given that this language was specifically approved by the Commission and has been included in each design certification rule to date, we believe that the NRC may and should take this opportunity to modify 52.99(e)(1) to reflect this language, just as the NRC proposes to use this opportunity to conform Section 52.99 to the "are met" language of Section 52.103(g) and the AEA. The proposed modification would not conflict with any of the revisions proposed in this rulemaking.

Affected Rulemaking Language	Comment/Basis	Recommendation
2. Section III. A, 3d bullet (76 FR 27927)	Use correct terminology as reflected in associated draft regulatory guide DG-1250 and underlying industry guidance (NEI 08-01) .	Revise bullet to refer to the "ITAAC <u>completion</u> closure-package"
3. Section III.B, paragraph beginning "When making ..." (76 FR 27927)	<p>This paragraph includes differing descriptions of the content of Section 52.99(c)(1) notifications. To avoid possible confusion, the SI should consistently describe the required content of these notifications consistent with the rule, associated draft regulatory guide DG-1250, and underlying industry guidance.</p> <p>The required content of Section 52.99(c)(1) notifications is appropriately described later in the paragraph as follows:</p> <p>The ITAAC post-closure notification must contain sufficient information demonstrating that, notwithstanding the information that prompted notification, the prescribed inspections, tests, and analyses have been performed as required and the prescribed acceptance criteria are met. The ITAAC post-closure notifications should explain the need for the notification, outline the resolution of the issue, and confirm that the ITAAC acceptance criteria continue to be met. The ITAAC post-closure notifications must include a level of detail similar to the level of information required in initial ITAAC closure notifications under 10 CFR 52.99(c)(1).</p>	<p>Delete the second sentence as follows:</p> <p>When making the 10 CFR 52.103(g) finding, the NRC must have information sufficient to determine that the relevant acceptance criteria are met despite the new information prompting the notification under proposed paragraph (c)(2). The licensee's summary statement of the basis for resolving the issue which is the subject of the notification, a discussion of any action taken, and a list of the key licensee documents supporting the resolution and its implementation, would assist the NRC in making its independent evaluation of the issue.</p>
4. Section III.B, paragraph beginning "The staff approach ..." (76 FR 27928)	Clarification	<p>Modify first sentence as follows:</p> <p>The staff approach would allow licensees to have ITAAC-related structures, systems, or components, or security or emergency preparedness related hardware, undergoing <u>maintenance</u> or certain <u>other</u> activities at the time of the 10 CFR 52.103(g) finding, if ..."</p>
5. Section III.B, First paragraph under heading "ITAAC Closure Documentation" (76 FR 27928)	<p>Delete language "The NRC understands that the nuclear power industry believes ..." This language is unnecessary.</p> <p>In this regard, we agree with the</p>	<p>Revise second sentence as follows:</p> <p>The NRC understands that the nuclear power industry believes that holders of combined licenses are already required, under <u>Consistent with</u> regulatory provisions such as 10 CFR part</p>

	comment of Commissioner Svinicki in her December 2010 vote sheet on SECY-10-0117, where she states: "In addition, I believe that existing quality assurance requirements already require the documentation and record retention requirements proposed to be added, rendering their inclusion here unnecessary and the accompanying details, once again, best left to guidance."	50, "Domestic Licensing of Production and Utilization Facilities," Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," <u>licensees are expected</u> to prepare and retain records supporting the vast majority of ITAAC processes, including the activities supporting the notifications that would be required by the proposed rule.
6. Section III.C, paragraph beginning "In addition, 10 CFR 2.340(j) .." (76 FR 27929)	We believe it is clearer to say, "if the presiding officer <u>finds that the contested acceptance criteria have been or will be met</u> " than it is to say, "if the presiding officer's decision <i>resolves the contention favorably</i> . The staff uses language similar to that underlined above in Section IV of the SI.	Revise third sentence consistent with language used in Section IV as follows: In both cases, if the presiding officer's decision resolves the contention favorably <u>finds that the contested acceptance criteria have been [are] met</u> , this does not obviate the need for the Commission to make the required finding under Section 185.b of the AEA and 10 CFR 52.103(g) that the acceptance criteria are met. See also General Comment #1.
7. Section IV, paragraph beginning "Proposed paragraph (j)(1) ..." (76 FR 27929)	Clarification	Add the following to the last sentence: "The phrase "otherwise able to make" conveys the NRC's determination that the Commission's process for supporting a Commission finding on uncontested acceptance criteria is unrelated to and unaffected by the timing of the presiding officer's initial decision <u>on contested acceptance criteria</u> ."
8. Section IV, last paragraph on (c)(2) beginning "The information provided ..." (76 FR 27931)	As identified in Section III.B, the proposed rule does not contain requirements on ITAAC Maintenance documentation and recordkeeping. Section III.B also explains that, nevertheless, licensees are expected to retain such records. The third-to-last sentence should be modified to reflect that ITAAC Maintenance documentation and recordkeeping is an expectation and not a requirement.	Modify the third-to-last sentence as follows: The paragraph (c)(2) notification must be in writing, and the records on which it is based should <u>must</u> be retained by the licensee to support possible NRC inspection.
9. Section IV, Subsection on Section 52.99(d) (76 FR 27932)	The discussion of Section 52.99(d) should begin by identifying that the NRC is not proposing any changes to this paragraph.	Add a new first sentence as follows: " <u>The NRC is not proposing any changes to this paragraph.</u> "

<p>10. Section IV, Subsection on Section 52.99(e) (76 FR 27932)</p>	<p>Clarification</p>	<p>Modify the second-to-last sentence as follows to be consistent with the last paragraph in Section IV.B.</p> <p>In general, the NRC expects to make the paragraph (c) notifications available shortly after the NRC has received the notifications and concluded that they are complete and detailed.</p>
<p>11. Section III.C and Section IV discussion on Section 2.340(j)</p> <p>The proposed rule discusses, at some length, the need to clarify the circumstances in a contested proceeding that could lead to a Commission finding under 10 CFR 52.103(g) that acceptance criteria are met. The NRC proposes to amend 10 CFR 2.340(j) to clearly explain when the Commission may make the 10 CFR 52.103(g) finding. The SI explains that the proposed changes reflect the need for the Commission to independently conclude that a contested acceptance criterion is, in fact, met after considering both the presiding officer's initial decision and information relevant to the 10 CFR 52.99(c)(2) notification.</p> <p>The language in 10 CFR 52.103(c) permitting operation during an interim period is an important mechanism for avoiding unnecessary delay as a result of hearings on contested acceptance criteria. We believe the SI discussion of Section 2.340(j) should reflect both 10 CFR 52.103(g), which prohibits operation until the Commission finds that the acceptance criteria are met, and 10 CFR 52.103(c), which allows for operation during an interim period while contested acceptance criteria are adjudicated, provided there is reasonable assurance of adequate protection to the public health and safety during the interim period.</p> <p>For example, the SI discussion at 76 FR 27929 states, "By using the word 'thereafter,' the NRC intends to emphasize that the Commission would not make a finding that contested acceptance criteria are met in advance of the presiding officer's initial decision on those acceptance criteria." This would be a logical place to expressly acknowledge Section 52.103(c) in the SI discussion of Section 2.340(j).</p> <p><u>Recommendation</u></p> <p>Although the NRC notes that 10 CFR 2.340(j) is not intended to be an exhaustive "roadmap" to a possible 10 CFR 52.103(g) finding that acceptance criteria are met, the proposed rule and SI do leave unaddressed the significant issue of findings under 10 CFR 52.103(c). To avoid possible confusion, we ask that the Commission clarify in the final rule the relationship between Sections 52.103(c) and 52.103(g), and make clear that under existing regulations operation may be authorized even though hearings on contested acceptance criteria are ongoing.</p>		

Rulemaking Comments

From: REED, Joseph [jsr@nei.org]
Sent: Tuesday, July 26, 2011 5:00 PM
Subject: NEI Comments on Requirements for Maintenance of Inspections, Tests, Analyses and Acceptance Criteria, Proposed Rule, 76 Fed. Reg. 27925 (May 13, 2011), Docket ID NRC-2010-0012
Attachments: 07-26-11_NRC_Requirements for Maintenance of ITAAC Proposed Rule.pdf; 07-26-11_NRC_Requirements for Maintenance of ITAAC Proposed Rule_Attachment.pdf

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Sincerely,

Russell J. Bell
Director, New Plant Licensing
Nuclear Generation Division

Nuclear Energy Institute
1776 I Street NW, Suite 400
Washington, DC 20006
www.nei.org

P: 202-739-8087
F: 202-533-0105
E: rjb@nei.org

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