

EDO Principal Correspondence Control

FROM: DUE: 08/15/11

EDO CONTROL: G20110559
DOC DT: 07/20/11
FINAL REPLY:

Stephen E. Kuczynski
Southern Company

TO:

Commission

FOR SIGNATURE OF :

** PRI **

CRC NO: 11-0429

Chairman Jaczko

DESC:

Vogtle Electric Generating Plant Units 3 and 4
Combined License Application - Final Standard
Design Certification Rulemaking for LWA-B Request
(EDATS: SECY-2011-0429)

ROUTING:

Borchardt
Weber
Virgilio
Ash
Mamish
OGC/GC
McCree, RII
Burns, OGC
Sanfilippo, OEDO

DATE: 07/28/11

ASSIGNED TO:

CONTACT:

NRO

Johnson

SPECIAL INSTRUCTIONS OR REMARKS:

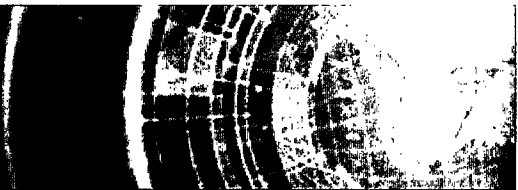
Coordinate with OGC.

Template: SECY-017

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EDATS

Electronic Document and Action Tracking System



EDATS Number: SECY-2011-0429

Source: SECY

General Information

Assigned To: NRO

OEDO Due Date: 8/15/2011 11:00 PM

Other Assignees:

SECY Due Date: 8/17/2011 11:00 PM

Subject: Vogtle Electric Generating Plant Units 3 and 4 Combined License Application - Final Standard Design Certification Rulemaking for LWA-B Request

Description:

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ADAMS Accession Numbers - Incoming: NONE

Response/Package: NONE

Other Information

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Recurring Item: NO

File Routing: EDATS

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OEDO Monthly Report Item: NO

Process Information

Action Type: Letter

Priority: Medium

Signature Level: Chairman Jaczko

Sensitivity: None

Urgency: NO

Approval Level: No Approval Required

OEDO Concurrence: YES

OCM Concurrence: NO

OCA Concurrence: NO

Special Instructions: Coordinate with OGC.

Document Information

Originator Name: Stephen E. Kuczynski

Date of Incoming: 7/20/2011

Originating Organization: Southern Company

Document Received by SECY Date: 7/28/2011

Addressee: The Commission

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Incoming Task Received: Letter

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

Date Printed: Jul 27, 2011 14:59

PAPER NUMBER: DTR-11-0429 LOGGING DATE: 07/21/2011
ACTION OFFICE: ED/GC

AUTHOR: CHRM Stephen Kuczynski (SNOC)
AFFILIATION: AL
ADDRESSEE: Gregory Jaczko and Commissioners
SUBJECT: Southern Nuclear Operating Company Vogtle Electric Generating Plant Units 3 and 4 Combined License Application Final Standard Design Certification Rulemaking for LWA-B Request

ACTION: Signature of Chairman
DISTRIBUTION: Chairman, Comrs, OGC, RF, SECY to Ack

LETTER DATE: 07/20/2011

ACKNOWLEDGED No

SPECIAL HANDLING: Commission Correspondence

NOTES: EDO should coordinate response with the OGC

FILE LOCATION: ADAMS

DATE DUE: 08/17/2011

DATE SIGNED:

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Chairman, President and
Chief Executive Officer

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JUL 20 2011

Docket Nos.: 52-025
52-026

ND-11-1476
10 CFR 52.80

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
ATTN: Chairman Gregory B. Jaczko
ATTN: Commissioner Kristine L. Svinicki
ATTN: Commissioner George Apostolakis
ATTN: Commissioner William D. Magwood, IV
ATTN: Commissioner William C. Ostendorff
Washington, DC 20555-0001

Southern Nuclear Operating Company
Vogtle Electric Generating Plant Units 3 and 4 Combined License Application
Final Standard Design Certification Rulemaking for LWA-B Request

Dear Commissioners:

By letter dated March 28, 2008, Southern Nuclear Operating Company (SNC) submitted an application for combined licenses (COLs) for proposed Vogtle Electric Generating Plant (VEGP) Units 3 and 4 to the U.S. Nuclear Regulatory Commission (NRC) for two Westinghouse AP1000 reactor plants, in accordance with 10 CFR Part 52. On October 2, 2009, as part of the COL application, SNC submitted a second Limited Work Authorization request (the initial request being that one submitted with the Early Site Permit application) to allow for installation of rebar and "first concrete." As the designated AP1000 Reference COL applicant, SNC has a keen interest in the first-of-a-kind process for issuing the initial COL under 10 CFR Part 52. In that regard, and separate from a complete and thorough safety review, SNC believes the Commission has discretion regarding the timing of the COL issuance as it relates to the design certification rule (DCR) certifying the amendment to the AP1000 design. We request that the Commission exercise its discretion to issue the COL based on the affirmation date of the AP1000 DCR. SNC believes that issuing the COL based upon the DCR affirmation, rather than the DCR effective date, would serve two important policy objectives: (1) ensuring finality of the design certification rule prior to issuance of the license and (2) maximizing efficiency in the licensing process.

SNC believes that issuing the COL as outlined above meets the Commission's 2008 Final Policy Statement on the Conduct of New Reactor Licenses Proceedings, which emphasizes that a COL that references a pending DCR should not be issued until the

DCR is "final." More specifically, SNC submits that the issuance of the Vogtle 3 and 4 COL can follow within 10 days of the Commission's decision on the mandatory hearing for the COL, which, under current Commission processes, would be issued immediately after affirmation of the DCR. Even if the Commission's affirmation vote is conditioned on revisions to the Staff's proposed final rule, the nature of those revisions will be known and the Commission's affirmation that triggers its decision on the mandatory hearing will be of the revised rule. As a result, both the Director of the Office of New Reactors and the Commission will have an adequate basis for finding that the application complies with the DCR at the time it is affirmed.

Relative to the process subsequent to DCD affirmation we offer the following policy considerations. First, the probability of substantive design changes resulting from the Office of Management and Budget's review of the DCR under the Paperwork Reduction Act is so low as to be non-existent. Also, the DCR is an enabling regulation that is implemented voluntarily by COL applicants, not one that imposes obligations on regulated parties without their consent. Congress' intent in requiring that regulations become effective 30 days after publication in the Federal Register is to "afford persons affected a reasonable time to prepare for the effective date of a rule or rules or to take any other action which the issuance of rules may prompt." Sen. Rep. p. 15; H.R. Rep. p. 25 (Sen. Doc. pp. 201, 259). In this case, the parties involved are voluntarily making themselves subject to the DCR and are prepared to come into compliance immediately. In such circumstances, the Attorney General's Manual on the Administrative Procedures Act, suggests that the 30 day notice requirement should not be an impediment to the issuance of the COL and/or LWA-B (Attorney General's Manual on the Administrative Procedures Act, pp. 36-37 - 1947).

SNC's COL application included an application for a second Limited Work Authorization (LWA-B) to which the above discussed policy issues also apply. SNC recognizes that the Commission might draw distinction between the policy implications of issuing the COL based on the DCD affirmation versus the LWA-B. LWA-B would authorize specifically the installation of the safety-related rebar, construction of the basemat, and embedments in the basemat for the nuclear island. Moreover, all LWA-B activities would be conducted at the risk of the applicant and are conducted pursuant to a site redress plan. The LWA-B would not bind the Commission to issue the COL or to certify the AP1000 design. Even if it were possible for the certified design to change between the affirmation and the effective date of the DCR, SNC would be required to conform the construction completed under the LWA-B to the final certified design. Thus, there is no risk that the activities conducted under LWA-B issued after affirmation of the DCR could result in a deviation from the certified design incorporated into 10 CFR Part 52.

Accordingly, should the Commission conclude that the COL should not be issued until the effective date of the DCR, we believe that the Commission should exercise its discretion to issue the LWA-B based upon the affirmation of the DCR, provided that the remainder of the record on the mandatory hearing supports the issuance of the LWA-B.

The activities approved previously by the Commission by LWA-A for the Vogtle 3 and 4 nuclear island are nearing completion. Without impacting the Commission's complete and thorough safety review, issuance of the COL and/or LWA-B based on the affirmation of the DCR as requested above would avoid disruption of construction processes and the displacement of workers, which could make it more difficult to maintain standards of quality on the project that both the NRC and SNC demand.

For the foregoing reasons, SNC submits that, as a policy matter, a DCR under Part 52 should be considered "final" for the purpose of issuance of the COL and/or LWA-B upon the affirmation of the rule by the Commission. Should the Commission agree with this interpretation, SNC also requests that the NRC process allow for the issuance of the LWA-B separate from the COLs. We appreciate your consideration of this issue.

If you have any questions regarding this letter, please contact Mr. W. A. Sparkman at (205) 992-5061.

Mr. S. E. Kuczynski states he is the Chairman, President and Chief Executive Officer of Southern Nuclear Operating Company, is authorized to execute this oath on behalf of Southern Nuclear Operating Company and to the best of his knowledge and belief, the facts set forth in this letter are true.

Respectfully submitted,

SOUTHERN NUCLEAR OPERATING COMPANY

Stephen E. Kuczynski

S. E. Kuczynski
Chairman, President and Chief Executive Officer, Southern Nuclear Operating Company

Sworn to and subscribed before me this 20th day of July, 2011

Notary Public: Sherry A. Mitchell

My commission expires: _____

SEK/MLG

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Dec 17, 2012
BONDED THRU NOTARY PUBLIC UNDERWRITERS

cc: Southern Nuclear Operating Company

Mr. J. A. Miller, Executive Vice President, Nuclear Development
Mr. J. T. Gasser, Executive Vice President, Nuclear Operations
Mr. D. H. Jones, Site Vice President, Vogtle 3 & 4
Mr. B. L. Ivey, Vice President, Nuclear Development Support
Mr. J. R. Johnson, Vice President, Quality and Compliance
Mr. T. E. Tynan, Vice President - Vogtle
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Mr. C. R. Pierce, AP1000 Licensing Manager
Mr. M. J. Ajluni, Nuclear Licensing Director
Mr. T. C. Moorer, Manager, Environmental Affairs, Chemistry and Rad. Services
Mr. J. D. Williams, Vogtle 3 & 4 Site Support Manager
Mr. J. T. Davis, Vogtle 3 & 4 Site Licensing Supervisor
Mr. W. A. Sparkman, COL Project Engineer
Ms. A. G. Aughtman, Lead AP1000 Licensing Project Engineer
Document Services RTYPE: GOV0208
File AR.01.02.06

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Ms. M. A. Sutton, Environmental Project Manager
Mr. M. D. Notich, Environmental Project Manager
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Mr. D. Cope, President and Chief Executive Officer

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