POLICY ISSUE
INFORMATION

October 3, 2012 SECY-12-0132

FOR: The Commissioners

FROM: Catherine Haney, Director
Office of Nuclear Material Safety
and Safeguards

SUBJECT: IMPLEMENTATION OF COMMISSION MEMORANDUM AND ORDER CLI-12-16 REGARDING WASTE CONFIDENCE DECISION AND RULE

PURPOSE:

To provide the Commission with the U.S. Nuclear Regulatory Commission (NRC) staff's approach for carrying out Commission Order CLI-12-16, which directs staff to advance licensing reviews and proceedings while the Commission addresses the U.S. Court of Appeals for the District of Columbia Circuit's remand of the Waste Confidence Decision and Rule (Title 10 of the *Code of Federal Regulations* (10 CFR) 51.23, "Temporary Storage of Spent Fuel after Cessation of Reactor Operation—Generic Determination of No Significant Environmental Impact"). This paper does not address any new commitments.

BACKGROUND:

Since 1984, NRC licensing reviews have considered the long-term storage and disposal of spent nuclear fuel as a generic issue, which was addressed by the Commission's Waste Confidence Decision and Rule (10 CFR 51.23). Recently, the U.S. Court of Appeals for the District of Columbia Circuit (the court) vacated this rule. In response, the Commission indicated its intent to develop a revised Waste Confidence Decision and Rule that addressed the court's remand (see staff requirements memorandum (SRM-) COMSECY-12-0016, "Approach for Addressing Policy Issues Resulting from Court Decision to Vacate Waste Confidence Decision and Rule," dated September 6, 2012) and directed the staff to continue with licensing reviews

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and proceedings during this rulemaking (see Commission Order CLI-12-16, dated August 7, 2012). The Commission has directed the staff to complete a revised, final Waste Confidence Decision and Rule by September 5, 2014.

APPROACH:

Reactor Licensing Reviews

The NRC staff is currently reviewing multiple applications, and it anticipates several new applications before September of 2014. These actions include 11 reactor license renewals (a total of 19 units), 10 combined licenses (COLs), one early site permit (ESP), and one initial operating license under 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities" (Watts Bar, Unit 2). See the enclosure for a list of these actions and relevant review dates.

To comply with Commission Order CLI-12-16, the NRC staff will continue to issue draft and final environmental impact statements (EISs) in support of these reviews. The NRC staff plans to develop appropriate explanatory text for these EISs that identifies long-term storage and disposal of spent nuclear fuel as a generic issue that is being addressed through rulemaking. Thus, the NRC will address its obligations under the National Environmental Policy Act (NEPA) for this issue through rulemaking rather than in individual license proceedings.

The NRC staff has identified common elements on Waste Confidence for these reviews, which will be addressed through explanatory text in draft or final EISs:

- Acknowledge that the environmental effects of spent nuclear fuel storage and disposal following the licensed lifetime of reactor operations are being evaluated in an EIS that will support ongoing rulemaking for a revised Waste Confidence Decision. The NRC has long considered this topic to be a generic issue that is best addressed through rulemaking, and the NRC rulemaking process provides an appropriate forum for public review and comment on both the draft EIS and the proposed Waste Confidence Decision and Rule.

- Affirm, consistent with CLI-12-16, that the NRC will not issue any licenses (i.e., take any final action) before resolution of Waste Confidence issues (i.e., promulgation of a final Waste Confidence Decision and Rule). Thus, there would be no irretrievable or irreversible resource commitments or potential harm to the environment incurred before Waste Confidence effects have been addressed and codified.

- State that staff will revise (e.g., issue an errata sheet) or supplement an EIS, as necessary, to address any issues left unresolved by the ongoing rulemaking. In short, if the revised Waste Confidence Decision and Rule leaves issues unaddressed, then staff would perform any necessary additional NEPA review for those issues before the NRC makes a final licensing decision.

For reactor license renewals, the staff plans to issue draft supplemental EISs and final supplemental EISs[1] with explanatory text. The staff also plans to issue the Watts Bar Unit 2 supplemental final environmental statement with the explanatory text (Watts Bar 2 is an operating license (OL) proceeding under 10 CFR Part 50).

For new reactor licensing pursuant to 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," the staff would issue planned draft and final EISs with the explanatory text. For COL applications in which the staff had issued a final EIS before the court's remand, the staff plans to use testimony in the uncontested hearings, as needed, to address issues related to Waste Confidence. This testimony would parallel the logic developed in the EIS explanatory text. (The staff addresses considerations for uncontested hearings in the section titled "HEARING CONSIDERATIONS.")

Storage Licensing Reviews

The staff currently is reviewing two license renewal applications (Calvert Cliffs and Prairie Island) for interim spent fuel storage installations (ISFSI). The staff has determined that licensing actions for new ISFSIs or renewals are affected by the Waste Confidence Decision. The NRC issued the environmental assessment (EA) for the Calvert Cliffs ISFSI before the court's remand, but will not issue a license until the court remand is addressed. For ISFSI licensing pursuant to 10 CFR Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste," the staff would issue final EAs with explanatory text that is similar to the text developed for reactor licensing EISs. The enclosure provides a list of the actions that would potentially be affected and the relevant review dates.

Common Activities

The NRC staff in affected offices will monitor and evaluate information developed in the rulemaking EIS process. Once the EIS for the Waste Confidence Decision and Rule is completed, the NRC staff will make a final determination on whether new and significant information has emerged that would affect the conclusions reached in the staff's final EISs or EAs for site-specific licensing. If such issues arise, the staff will determine if the information warrants supplementing an EIS or EA, or if other approaches are appropriate.

HEARING CONSIDERATIONS:

In CLI-12-16, the Commission stated that it intended for contested adjudications to continue to progress while the Waste Confidence issues were being considered. See *Calvert Cliffs Nuclear Project et al.,* CLI-12-16 (*slip op at 4 n.7*). Regarding uncontested, "mandatory" hearings for COL applications, a completed final EIS is one of the two "trigger points" needed for initiating the uncontested hearing in a COL proceeding. (The other is the completion of the staff's final safety evaluation report). To issue a draft EIS or final EIS supporting a COL application and to support the conduct of these mandatory hearings, the staff plans to develop "conditional"

[1] License renewal EISs are supplements to NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants."

conclusions regarding the environmental effects of spent nuclear fuel storage and disposal following the plant's licensed life.[2]

The Office of Commission Appellate Adjudication has prepared a parallel COMSECY to provide options for addressing COL uncontested hearings before a final Waste Confidence Decision and Rule is issued. The document provides further discussion on this matter.

MITIGATION OF LICENSING EFFECTS:

The NRC is currently reviewing applications for new reactor licenses, reactor license renewals, new ISFSI licenses, and ISFSI renewals. The staff anticipates additional applications before the planned September 2014 completion of the Waste Confidence rulemaking. The enclosure provides scheduling details for applications with ongoing reviews, including likely dates for completion of the staff's review. The planned approach—to use explanatory text—allows these applications to advance while the Waste Confidence rulemaking continues.

The staff's planned approach avoids the backlogs that would occur if staff members were unable to issue environmental-review documents (EAs and EISs) and proceed to evidentiary hearings (when applicable) until a final rule is issued. Such delays would be contrary to the Commission's express direction in CLI-12-16 to continue licensing reviews and hearings, with the exception of Waste Confidence matters. By using the staff's planned approach, however, license issuance is the only licensing milestone that the staff will be unable to complete before a final Waste Confidence Decision and Rule is issued.

STAKEHOLDER ENGAGEMENT AND COMMUNICATION:

The NRC staff recognizes the need to engage stakeholders in communication as it moves forward with this approach. The staff intends to involve the U.S. Environmental Protection Agency (EPA) early in the process to explain this approach. Initial staff contacts suggest that EPA may be receptive to the staff's approach, but the NRC plans additional outreach to EPA staff.

In addition, the NRC staff envisions enhanced outreach to stakeholders to ensure that they are aware of the Waste Confidence rulemaking as the appropriate venue for comments related to Waste Confidence. In some cases, staff will need to proactively notify stakeholders of the Waste Confidence rulemaking if the project-of-interest will not have a comment opportunity before the comment period for the proposed rule and draft EIS. Finally, the staff recognizes the need for coordinated communication between licensing and rulemaking staffs, which will provide consistent messages regarding comment opportunities and issues subject to the Waste Confidence rulemaking.

[2] Such language will allow the staff to make "conditional" findings, as part of its hearing testimony, on the ultimate balancing to be performed, consistent with 10 CFR Part 51.107, "Public Hearings in Proceedings for Issuance of Combined Licenses; Limited Work Authorizations." Where the final EIS was issued before the court's remand, this information would be provided as testimony in the staff's information paper supporting the mandatory hearing.

RESOURCES:

The NRC staff can prepare explanatory text within the existing FY2013 budget for evaluation and development of environmental documents for licensing reviews. The staff does not anticipate a significant increase in the level of resources needed to participate in the hearings as a result of this approach, as the Waste Confidence issue will be resolved through the rulemaking process. The staff estimates that less than one full-time equivalent (FTE) will be needed to accomplish these efforts.

COORDINATION:

The Office of the General Counsel reviewed this Commission paper and has no legal objections. The resources identified in this paper are less than one FTE and do not meet the threshold necessary to warrant review by the Office of the Chief Financial Officer.

/RA by S. Moore Acting For/

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Enclosure:
Licensing Actions Affected
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ADAMS Accession No.: Package ML12276A054; Memo ML12264A451; Enclosure ML12276A038 *via e-mail

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