

April 4, 2013

MEMORANDUM TO: Chairman Macfarlane
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff

FROM: R. W. Borchardt */RA Mike Johnson for/*
Executive Director for Operations

SUBJECT: STAFF ISSUANCE OF RESEARCH AND TEST
REACTOR RENEWED LICENSES

The purpose of this memorandum is to inform the Commission that: (1) the staff will issue renewed research and test reactor (RTR) licenses as the license renewal application (LRA) reviews are completed; and (2) RTR renewed licenses are not dependent on the Waste Confidence Rule.

On June 8, 2012, the U.S. Court of Appeals for the District of Columbia Circuit found that some aspects of the U.S. Nuclear Regulatory Commission's (NRC's) 2010 Waste Confidence Rulemaking did not satisfy the National Environmental Policy Act and vacated the rulemaking. On August 7, 2012, the Commission issued *Calvert Cliffs Nuclear Project, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), et al., CLI-12-16, 75 NRC (2012)*, a Memorandum and Order that included the Commission's decision not to issue licenses dependent on the Waste Confidence Rule until the court's remand has been appropriately addressed. The Commission further stated that this determination extends just to final license issuance, and directed the staff to continue to move forward on all licensing reviews and proceedings.

At the time of the Commission Memorandum and Order, the Office of Nuclear Reactor Regulation (NRR) had 12 RTR LRAs under review. On October 3, 2012, these RTR LRAs were not identified as being dependent on the Waste Confidence Rulemaking in the enclosure to SECY-12-0132, "Licensing Actions Affected by Waste Confidence Remand." Since that time period, work on each RTR LRA has proceeded, and two have been completed.

The staff has analyzed the Waste Confidence 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"), as well as supplemental information, and concluded that 10 CFR 51.23 applies only to the licensing of power reactors and independent spent fuel storage installations. It should be additionally noted that on May 20, 1983, the statements of consideration for the original proposed Waste Confidence rulemaking stated that the Waste Confidence Rule allows "environmental and safety implications of spent fuel storage after the termination of reactor operating licenses [to] not be

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considered further in Commission proceedings for the issuance of an operating license or license amendment for a nuclear *power plant*,” (emphasis added) and also applies “to proceedings for licensing spent fuel storage in independent spent fuel storage installations (ISFSI) under Part 72” (48 FR 22730).

Given the preceding justification, NRR will issue RTR renewed licenses as the LRA reviews are completed. The assessment of the impact of the Waste Confidence Rule on RTR licensing was completed through a collaborative effort between staff from NRR, the Office of the General Counsel and the Waste Confidence Directorate of the Office of Nuclear Material Safety and Safeguards.

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