

April 15, 2015

Mr. Christopher M. Fallon, Vice President
Nuclear Development
Duke Energy Florida, Inc.
P.O. Box 1006 – EC12L
Charlotte, NC 28201-1006

SUBJECT: REQUEST FOR GUIDANCE CLARIFYING APPROPRIATE METHODS FOR
RESOLVING GENERIC ERRORS IN CERTIFIED DESIGN INFORMATION

Dear Mr. Fallon:

After coordination with the General Counsel, I am responding to your letter dated January 27, 2015 (Agencywide Documents and Management System Accession No. ML15050A142). You requested that the U.S. Nuclear Regulatory Commission (NRC) clarify the appropriate methods to correct errors in the generic design control document (DCD) for a certified design. You also requested that the NRC concur with your assertion that “significant errors” in a DCD for a certified design may be corrected outside of a combined license (COL) proceeding without delaying issuance of a COL that references the certified design. Specifically, you sought the NRC’s agreement that rulemaking is the preferred method for correcting significant errors in the DCD and that it would be inappropriate to delay issuance of COLs to applicants referencing the DCD pending the completion of such a rulemaking.

While rulemaking is generally the preferred method for addressing DCD errors that meet the criteria of Title 10 of the *Code of Federal Regulations* (10 CFR) 52.63, “Finality of standard design certifications,” it is by no means the only way. As noted in your letter, such errors can also be addressed on a plant-specific basis through existing regulatory processes. Depending on the circumstances, it may be preferable to address such issues through plant-specific action, including departures or orders, instead of, or prior to, undertaking a rulemaking to amend the DCD. I understand that during interactions with the staff, you and similarly-situated AP1000 applicants had earlier indicated a willingness to address previously identified errors as part of the COL application review and in a consistent manner across the AP1000 design center.

As an alternative to this approach, the staff is willing to engage with you and other stakeholders regarding whether it would be more appropriate under these circumstances to correct the DCD by rulemaking rather than address the DCD errors on a plant-specific basis.

I do not, however, agree with your assertion that it would be inappropriate as a general matter to delay COL issuance because of significant errors in the referenced DCD. The Atomic Energy Act of 1954, as amended (AEA), requires the NRC to make the final safety finding for both construction and operation when it issues a COL. In making this finding for a COL applicant referencing a design certification, the NRC relies on the safety findings made during the design certification review. This reliance, however, must be reasonable. Thus, if the NRC knows of a significant error in the DCD that undermines the statutorily required COL safety findings, the NRC may issue the COL only after the error is adequately addressed such that the required findings can be made.

Your letter states that in making the required COL findings, the NRC can rely on the 10 CFR 52.63 process for correcting the DCD by rulemaking. You appear to be contemplating the initiation of an ill-defined rulemaking process, where rulemaking is initiated before there is a clear and specifically defined path to successfully resolve the issue. However, previous design certification rulemakings have been initiated only when there is final design information for which a final NRC safety evaluation report has been issued. In addition, relying on the rulemaking process in the manner you suggest would impermissibly defer the necessary safety findings beyond COL issuance, which is not permitted under the AEA or the NRC's rules. As a result, if errors in the DCD undermine the required COL safety findings and rulemaking (rather than plant-specific action) is initiated to correct them, the NRC cannot issue the COL until it finalizes the rulemaking.

I appreciate the opportunity to address the important regulatory matters raised in your letter. My staff and I are available to further discuss these matters with you.

Sincerely,

/RA/

Glenn M. Tracy, Director
Office of New Reactors

Docket Nos. 52-018
52-019
52-029
52-030

As an alternative to this approach, the staff is willing to engage with you and other stakeholders regarding whether it would be more appropriate under these circumstances to correct the DCD by rulemaking rather than address the DCD errors on a plant-specific basis.

I do not, however, agree with your assertion that it would be inappropriate as a general matter to delay COL issuance because of significant errors in the referenced DCD. The Atomic Energy Act of 1954, as amended (AEA), requires the NRC to make the final safety finding for both construction and operation when the COL is issued. In making this finding for a COL applicant referencing a design certification, the NRC relies on the safety findings made during the design certification review. This reliance, however, must be reasonable. Thus, if the NRC knows of a significant error in the DCD that undermines the statutorily-required COL safety findings, the NRC may issue the COL only after the error is adequately addressed such that the required findings can be made.

Your letter states that in making the required COL findings, the NRC can rely on the 10 CFR 52.63 process for correcting the DCD by rulemaking. You appear to be contemplating the initiation of an ill-defined rulemaking process, where rulemaking is initiated before there is a clear and specifically defined path to successfully resolve the issue. However, previous design certification rulemakings have been initiated only when there is final design information for which a final NRC safety evaluation report has been issued. In addition, relying on the rulemaking process in the manner you suggest would impermissibly defer the necessary safety findings beyond COL issuance, which is not permitted under the AEA or the NRC's rules. As a result, if errors in the DCD undermine the required COL safety findings and rulemaking (rather than plant-specific action) is initiated to correct them, the NRC cannot issue the COL until it finalizes the rulemaking.

I appreciate the opportunity to address the important regulatory matters raised in your letter. My staff and I are available to further discuss these matters with you.

Sincerely,

/RA/

Glenn M. Tracy, Director
Office of New Reactors

Docket Nos. 52-018
52-019
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Letter to: C. Fallon, From Glenn M. Tracy Dated: April 15, 2015

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RESOLVING GENERIC ERRORS IN CERTIFIED DESIGN INFORMATION

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(Revised 09/04/2014)

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Revised 01/12/2015

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