



NUCLEAR ENERGY INSTITUTE

April 22, 1994

Mr. William T. Russell, Director
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Mr. Russell:

Enclosed for your consideration are summaries of the industry positions and recommendations on three of the four topics planned for discussion at our meeting scheduled on April 25, 1994. Enclosures 1, 2 and 3 address the "Tier 2*" issue, "COL Action Items" and "Applicable Regulations," respectively.

Under separate cover, we have forwarded a discussion and proposed resolution of the "PRA content in DCD" issue. This letter includes a discussion of the industry's vision regarding future use and maintenance of the design PRA by ALWR licensees as a conceptual framework for follow-on discussions in this area.

We hope the forwarded information will be helpful to the NRC staff understanding of the industry's recommendations and associated rationale on each of the four issues to be discussed April 25.

We look forward to a productive meeting on Monday.

Sincerely,

A handwritten signature in black ink, appearing to read 'William H. Rasin', is written over a horizontal line.

William H. Rasin
Vice President and Director
Technical

WHR/RJB/
Enclosures

c: A. Thadani
D. Crutchfield
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ENCLOSURE 1 - "Tier 2*"

The NRC staff has indicated their intent to designate as Tier 2* a subset of Tier 2 design information which may not be changed under the Section 50.59-like process i.e., without prior NRC approval. The industry believes that there is an alternative method for accomplishing the staff's objective without unnecessarily restricting changes that do not impact safety.

As discussed in our December 28, 1993, response to the Advance Notice of Proposed Rulemaking (ANPR) on granting standard design certifications for evolutionary LWRs, the industry has proposed that specific Tier 2* material be identified in the Design Control Document (DCD) as requiring staff notification prior to implementing changes under § 50.59. The intent of this proposal is to provide the NRC staff opportunity, prior to implementation of a proposed Tier 2* change, to ensure that no unreviewed safety question is raised. As discussed below, a focus on prior NRC staff notification, rather than prior approval, would be effective in satisfying the NRC staff's understood intent in establishing Tier 2*.

Specifying a requirement for "prior NRC approval" of Tier 2* changes (or predesignating such changes as "unreviewed safety questions") would automatically require the applicant/licensee, as a matter of procedure, to seek an exemption or amendment for every change regardless of its safety significance. We do not believe this to be necessary nor do we understand this to be the NRC staff intent. Rather, the industry envisions that a Tier 2* change notification would be provided to the NRC staff and would include an applicant/licensee safety evaluation of the change. Such prior notification will provide the NRC staff opportunity to review the safety evaluation. If the NRC staff concludes that an unreviewed safety question exists, the applicant/licensee would be constrained from implementing the change absent NRC review and approval as part of an exemption or amendment request, or a successful appeal of the NRC staff determination.

In order to avoid adverse scheduler and cost impacts on downstream engineering or construction activities, we suggest notification be given to the NRC staff at least 60 days prior to implementation of Tier 2* changes. Such a period will avoid undue delay in implementing relatively straightforward changes within Tier 2*, while assuring that the NRC staff has adequate time to review proposed changes.

The industry's ANPR response also indicated that we do not believe it is necessary to identify Tier 2* areas in proposed design certification rules, as indicated in Section A.13(d)(3) of the ANPR. Rather, the industry proposes the following DCD introductory language¹:

¹ Based on Section 3.3.2 of NUMARC-proposed DCD introductory language forwarded to the NRC staff for consideration on February 4, 1994.

Plant-Specific Changes to Tier 2, In General - An applicant or licensee which references the DCD may make changes to the design or procedures described in Tier 2, without prior NRC approval, unless the proposed change involves a change to Tier 1, a change to the technical specifications incorporated in the license for the plant, or an unreviewed safety question under 10 CFR 50.59. Changes made without prior NRC approval shall be documented, and records of such changes shall be maintained and available for audit until the date of termination of the license. Prior to fuel load, reports of such changes shall be submitted to the NRC semi-annually; after fuel load, such reports shall be submitted as provided in 10 CFR 50.59(b)(2).

Plant-Specific Changes to Certain Designated Material in Tier 2 - Tier 2 of the DCD designates certain material as requiring NRC notification prior to implementing plant-specific changes thereto pursuant to the provisions of the preceding paragraph. Such notification, including an applicant/licensee safety evaluation, shall be provided to the NRC staff at least 60 days prior to implementation of a change to the designated material. The applicant or licensee may implement the change without prior NRC approval unless the NRC determines that the change involves an unreviewed safety question.

Lastly, the industry's response to the ANPR emphasized the need to make Tier 2* designations as specific as possible. This is necessary to avoid unduly restricting the flexibility of applicants/licensees in implementing Tier 2 design requirements. It is expected that plant designers will suggest specific Tier 2* language during interactions with the NRC staff related to DCD approval.

In summary, we believe satisfactory resolution of the Tier 2* issue can be accomplished as discussed above. Namely, the elements of resolution are:

- (1) Making Tier 2* designations as specific as possible
- (2) Designation of Tier 2* material in the DCD (only)
- (3) Prior NRC staff notification of changes in Tier 2* areas

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Enclosure 2 - "COL License Information"

During review of Standard Safety Analysis Reports (SSARs), the NRC staff and plant designers identified certain matters to be addressed by an applicant or licensee that references the design certification. These matters have been designated in SSARs as "COL License Information."

The purpose of these COL License Information items is to identify the type of information that should be included by a license applicant in a plant-specific safety analysis report (SAR) that references the DCD. While not completely or uniquely defining the set of information needed in a plant-specific SAR, the industry recognizes that the set of COL License Information items identified in SSARs may provide useful guidance to license applicants and NRC staff reviewers.

The plant-specific SAR will be subject to review and approval by the NRC. If the plant-specific SAR does not contain sufficient or appropriate information (per 10 CFR 52.79), the NRC may decline to issue a license until the plant-specific SAR is amended to include the information in question. After the license is issued, the provisions in the plant-specific SAR will be binding on the licensee. Thus, inclusion of COL License Information items in the DCD as regulatory requirements is not necessary to ensure that plant-specific SARs will contain appropriate and sufficient commitments related to the COL License Information items. In a meeting with the industry on October 12, 1993, the NRC staff indicated concurrence in the exclusion of COL License Information items from the DCD, i.e., retention in SSARs only.

Nonetheless, the industry is aware that the NRC staff may now consider that some, many or all COL License Information items should be retained in the DCD. To facilitate resolution of this issue, the industry would support retention of all COL License Information items in the DCD together with contexting language in the DCD introductory section that indicates their nature as regulatory guidance except as stated otherwise in the DCD. Recommended language for inclusion in the DCD introduction is attached for NRC staff consideration.

Appropriate clarifying introductory language is needed to ensure COL License Information items in the DCD do not unnecessarily restrict the flexibility of COL applicants in the development of plant-specific SARs with respect to regulatory commitments concerning plant operations. We note that many of the COL License Information items identify criteria applicable to operational practices and procedures that are independent of the specific design features in the DCD and generally more effectively and expertly addressed by an applicant licensee.

Moreover, absent appropriate clarifying language, a COL applicant/holder wishing to deviate from COL License Information items contained in the DCD, even to reflect state-of-the-art regulatory practices and accumulated operating experience, will be subject to Part 52 change controls, with the attendant additional costs and procedural delays. We note that operational practices and procedures have experienced a significant evolution over the last decade, and it may be expected that this evolution will continue. This is particularly true in light of the current trend toward performance and risk-based regulation and the ongoing industry activities under the NPOC Strategic Plan aimed at establishing efficient, standardized operational processes for ALWRs. Therefore, it is unnecessary and undesirable at this time to bind both the NRC and license applicant to criteria that may be obsolete at the time a license application is submitted.

In summary, the industry supports resolution of this issue via retention of identified COL License Information items in the DCD and incorporation of appropriate clarifying language in the DCD introduction regarding their nature as regulatory guidance.

POSSIBLE SECTION FOR INCLUSION IN DCD INTRODUCTION

3.3.2 COL License Information Items

Tier 2 identifies certain matters to be addressed by an applicant or licensee that references the design certification for the ALWR. These matters are designated as "COL License Information."

The purpose of the COL License Information items is to identify the type of information that should be provided in plant-specific SARs that reference the DCD. These items are in the nature of guidance to a referencing applicant or licensee. These COL License Information items do not establish requirements; rather they identify an acceptable set of information, but not the only acceptable set of information, for inclusion in a plant-specific SAR. An applicant may deviate from one or more COL License Information items, provided that the deviation is identified in the plant-specific SAR. After issuance of a license, the COL License Information items have no effect; instead, the corresponding provisions in the plant-specific SAR are applicable.

ENCLOSURE 3 - APPLICABLE REGULATIONS

The NRC staff has stated that the severe accident criteria positions as specified in SECY-93-087 and the Commission's Staff Requirements Memorandum (SRM) dated July 21, 1993, should be formulated and adopted as "applicable regulations" in a design certification rule. These positions would be stated broadly, similar to the general design criteria, and would become part of the Commission's baseline of regulations that were "applicable and in effect at the time the certification was issued." The staff has stated that such an approach is necessary (1) to ensure the positions become applicable regulatory requirements at the time of certification of the standard design, (2) to enable the NRC to modify the design certification or issue a plant-specific order to ensure that the design certification or plant complies with the positions, (3) and to ensure that the positions are part of the "applicable regulations" in effect at the time of design certification for purposes of certification renewal. (Reference SECY-92-287A, Enclosure 2, pp. 1-3.) At present, the staff has designated fourteen areas for treatment as "applicable regulations" in the ABWR final safety evaluation report (FSER) and fifteen such areas in the System 80+ FSER.

The industry believes that there is no need to create within the design certification rule a free-standing collection of additional "applicable regulations." Commission-approved staff positions that are imposed on a design certification are well documented and will be reflected in the design provisions contained in Tier 1 and Tier 2 of the Design Control Document (DCD) incorporated in the rule. Those provisions will be integral elements of the design certification rule, will constitute "applicable regulations" in considering subsequent compliance backfits pursuant to § 52.63(a), and comprise part of the regulatory base for making design certification renewal determinations. Indeed, of the fourteen areas presently designated for treatment as "applicable regulations" in the ABWR FSER, eleven are already addressed in part or in full in the ABWR Certified Design Material (i.e., Tier 1) and cannot be changed absent rulemaking or an exemption. A corresponding assessment by ABB/CE concluded similarly that twelve of fifteen proposed applicable regulation areas are addressed by Tier 1 requirements for the System 80+.

In addition, formulating independently-stated "applicable regulations" to include in a certification, which is itself a rule, generates needless duplication, complexity, and delay. After achieving agreement on the specifics of the design, the staff's proposed approach would result in yet another round of extensive discussion to reach agreement on matters that have already been agreed to in detail, but now must be formulated in more "broadly stated" positions. The specific wording of those positions will likely be a subject of controversy if those positions are to become free-standing "applicable regulations." Such debates present the prospect of further delays in certification

schedules and a prolonging of the certification proceedings, even though there is agreement that the specifics of the design are acceptable.

Finally, these "broadly stated," free-standing "applicable regulations" carry the potential for new and diverse interpretations by the NRC staff during the life of the design certification -- interpretations which may be at odds with the understandings that were translated into specific requirements in the DCD. If the "broadly stated" staff positions were to become "applicable regulations," the staff would be free to require backfits to its new interpretations of these positions. The injection of this factor into the Part 52 process is destabilizing and runs counter to the objective of standardization.

For the reasons discussed above, the industry strongly recommends that the NRC staff not include applicable regulations as part of proposed design certification rules.