CURRENT NRC STAFF VIEWS ON APPLYING THE DEFERRED PLANT POLICY STATEMENT TO PART 52 PLANTS

This document describes current U.S. Nuclear Regulatory Commission (NRC) staff views on how provisions in the Policy Statement on Deferred Plants, 52 Fed. Reg. 38,077 (October 14, 1987) (Policy Statement), may be applied to plants licensed under 10 C.F.R. Part 52.

Relationship of the Policy Statement to Part 52

The Policy Statement precedes promulgation of Part 52, and it only discusses the regulatory framework applicable to the two-step licensing process under Part 50. Under Part 50, an applicant first applied for a construction permit (CP) by submitting a preliminary safety analysis report under 10 C.F.R. § 50.34(a), and upon receipt of a CP under 10 C.F.R. §§ 50.35 and 50.40, commenced construction. CP holders then later applied for an operating license (OL) by submitting a final safety analysis report (FSAR) under 10 C.F.R. § 50.34(b) to request an OL under 10 C.F.R. §§ 50.40 and 50.57. The materials licenses needed to support construction and to possess fuel prior to operation were issued separately from the CP, but when the Part 50 OL was issued, it included the materials licenses necessary for operation.

In contrast, Part 52 features a combined license (COL), which is a combined construction permit and operating license that includes materials licenses under 10 C.F.R. Parts 30, 40, and 70. Operation under the COL is not permitted until the Commission finds under § 52.103(g) that the acceptance criteria in the COL are met. This finding is made at the end of construction.

Notwithstanding these differences, COL holders may follow the applicable parts of the Policy Statement and similarly describe their partially-constructed facilities as “deferred” or “terminated” while, of course, continuing to comply with the Commission’s regulations and the terms and conditions of the COL. The need to comply with the regulations and the license is addressed in the Policy Statement.[1] Thus, COL holders are responsible for maintaining compliance with all applicable NRC requirements whether or not a particular requirement is specifically discussed in the Policy Statement or this document.

In addition, the Policy Statement as currently written does not apply if construction has not started. A licensee must have ceased or reduced construction activities before the plant qualifies as a deferred plant.[2] To qualify as a terminated plant, a licensee must have permanently stopped construction.[3] Construction can only be “ceased,” “reduced,” or “stopped” if construction has begun. However, COL holders that have not started construction are subject to the same requirements as COL holders that have started construction, except for requirements related to construction activities and those that apply only after construction has begun, e.g., the § 52.99(a) requirement to provide an ITAAC completion schedule. With these exceptions, the considerations discussed below would also apply to COL holders that have not started construction.

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[1] *See* Policy Statement, 52 Fed. Reg. at 32,078, 32,079.

[2] Policy Statement, 52 Fed. Reg. at 32,078.

[3] *Id.*

Policy Statement as Applied to COLs

The Policy Statement is divided into an outline comprising two major sections addressing deferred and terminated construction of facilities. Within each of those two areas, the Policy Statement provides guidance and explanation to the CP holder and to the NRC. The sections below analyze the extent to which those sections of the Policy Statement may be applied to a COL holder.

Deferred Plants (Policy Statement § III.A)

Notification of Plant Deferral (Policy Statement § III.A.1)

The Policy Statement provides that the Part 50 CP holder should inform the Director of the Office of Nuclear Reactor Regulation within thirty days of the decision to defer. The notification should include the reason for deferral, date of reactivation (if known), whether a CP extension request will be submitted, and plans for fulfilling the terms of the CP, including maintenance, preservation, and documentation requirements.

With the exception of CP extension requests, this notification policy should also be applied to COL holders, with the notification being addressed to the Director of the NRC office with regulatory responsibility for the COL. As explained below, information regarding a CP extension is inapplicable to a COL holder, and there is no analogous expiration date of a COL during the construction phase.

Extension of Construction Permit (Policy Statement § III.A.2)

The Policy Statement describes the need for a Part 50 CP holder to ensure that its CP does not expire. However, this concern is inapplicable to a Part 52 COL holder because the COL does not expire during construction.[4]

Maintenance, Preservation, and Documentation of Equipment (Policy Statement § III.A.3)

As described in the Policy Statement, the NRC requirements for verification of construction status, retention and protection of records, and maintenance and preservation of equipment and materials are applied through: 10 C.F.R. § 50.54(a), "Conditions of licenses," and 10 C.F.R. § 50.55(f), "Conditions of Construction Permits," which require that a quality assurance program be implemented; and 10 C.F.R. Part 50 Appendix B, which requires that all activities performed to establish, maintain, and verify the quality of plant construction be addressed in the licensee's quality assurance program.[5] Further, 10 C.F.R. Part 50 Appendices A and B require that certain quality records be retained for the life of the plant. In addition, 10 C.F.R. § 50.55(e) requires reporting of deficiencies in design, construction, quality assurance, etc.; 10 C.F.R. § 50.71 requires the maintenance of records; and 10 C.F.R. Part 21 requires reporting of defects and noncompliance.[6] The Policy Statement notes that implementation of the quality assurance

[4] *See* 10 C.F.R. § 52.104.

[5] Policy Statement, 52 Fed. Reg. at 38,078.

[6] Policy Statement, 52 Fed. Reg. at 38,078.

program will be examined periodically to determine licensee compliance with commitments and overall effectiveness.[7]

Similarly, each holder of a COL is required to implement the quality assurance program for design and construction described or referenced in the safety analysis report. 10 C.F.R. § 50.55(f)(4). Further, if any portion of the quality assurance program undergoes any significant breakdown, these breakdowns are reportable to the NRC.[8] Appendix B to Part 50 sets forth the requirements for quality assurance programs for nuclear power plants, including COL holders. Criterion XIII of Appendix B to Part 50 requires in part that "[m]easures shall be established to control the handling, storage, shipping, cleaning and preservation of material and equipment in accordance with work and inspection instructions to prevent damage or deterioration." Appendix B to Part 50 also addresses documentation requirements, such as maintenance of records.[9]

Where the Commission has not made the finding under 10 C.F.R. § 52.103(g), § 50.55(f)(4)(i) describes the processes for changes to the previously-accepted quality assurance program, including when the changes must receive NRC approval prior to implementation. Accordingly, a COL holder who ceases work must either store and preserve its material, equipment, and documentation in accordance with its NRC-approved quality assurance program, or follow the processes in the Commission's regulations to change the quality assurance program to reflect how the licensee seeks to treat its equipment during deferral or termination. In addition to quality assurance requirements, a COL holder during construction is also subject to notification and recordkeeping requirements, including those in 10 C.F.R. Part 21 and 10 C.F.R. §§ 50.55(e), 50.71.

Conduct of Review During Deferral (Policy Statement § III.A.4)

The Policy Statement provides that during deferral, the staff normally brings all ongoing post-CP and OL reviews to a close. For a COL holder, the licensing reviews are already complete for the COL, but the staff would similarly wrap-up any license amendment requests or similar requests for action, along with any verifications of closure of inspections, tests, analyses, and acceptance criteria (ITAAC).

Applicability of New Regulatory Requirements During Deferral (Policy Statement § III.A.5)

The Policy Statement describes how deferring construction under a CP does not impact how the NRC applies new regulatory requirements. The deferred plants will be considered in the same manner as those still under construction when it comes to matters like backfit.

For holders of COLs, the issue finality provisions of 10 C.F.R. Part 52 govern the applicability of new regulations. These issue finality provisions would be considered before imposing new requirements on deferred plants.

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[7] *Id.* at 38,079.

[8] 10 C.F.R. § 50.55(e)(4)(iii).

[9] *See*, *e.g.*, 10 C.F.R. Part 50, Appendix B, Criterion XVII.

Information to be Submitted by Licensee When Reactivating (Policy Statement § III.A.6)

The Policy Statement states that a licensee seeking to reactivate a plant should send a letter to the Director of NRR at least 120 days before the expected construction restart date, and should include updated construction schedules, open licensing issues, descriptions of how new regulations are to be addressed, and as necessary an amended OL application (i.e., FSAR).

A COL holder seeking reactivation should submit a similar letter to the Director of the NRC office with responsibility for the COL, although an application update is not required since the COL proceeding is closed. It would also be desirable for this letter to include a list of planned or outstanding license amendment requests and similar items. The staff notes that some of the information requested by the Policy Statement is separately required for COL holders, such as the annual FSAR updates required by § 50.71 and the ITAAC completion, fuel load, and operational program implementation schedules and schedule updates required by 10 C.F.R. §§ 52.99(a), 52.103(a), and standard license conditions included in COLs.

Staff Actions When Notified of Reactivation (Policy Statement § III.A.7)

The Policy Statement provides that the acceptability of structures, systems, and components (SSCs) important to safety will be determined based on reviews of the approved maintenance and preservation programs, as implemented; verification that design changes, modifications, and required corrective actions have been implemented in accordance with established quality control requirements; and verification though inspection that quality and performance requirements have not been significantly reduced below those specified in the FSAR.

NRC inspections for reactivated COLs could also address the matters listed in this part of the Policy Statement. A principal distinction between Part 50 and Part 52 is that COLs are subject to ITAAC. The ITAAC closure process would address the performance requirements verification aspect of the reactivation inspections for SSCs subject to ITAAC. Special attention should be paid to previously closed ITAAC to assure that the preservation actions were sufficient such that any aging effects did not call into question previously-closed ITAAC. If the basis for determining the successful completion of the previously closed ITAAC is materially altered by new information, the licensee must notify the NRC of this in accordance with 10 C.F.R. § 52.99(c)(2).

Terminated Plants (Policy Statement § III.B)

Unlike CPs issued under Part 50, which are required by Section 185a. of the Atomic Energy Act of 1954, as amended (AEA), and 10 C.F.R. § 50.55(a) to state a latest date for completion of construction, there is no similar statutory or regulatory requirement for COLs. The COL holder is not required by regulations to withdraw, terminate, or otherwise surrender its COL. Where no § 52.103(g) finding has been made, which allows operation to begin, an issued COL may be held for an indefinite period. The relationship between the steps under the Policy Statement associated with voluntary termination of CPs and how they would apply to COLs is explored below.

Plant Termination (Policy Statement § III.B.1)

The Policy Statement provides that the CP holder should inform the Director of NRR when the plant is placed in terminated status. Further, if withdrawal of the CP is sought, then the CP holder should provide sufficient advance notice to allow the NRC staff to consider appropriate

terms and conditions, and, if needed, a brief extension of the CP.[10] The Policy Statement reminds the CP holder that while the permit is active, the CP holder must continue to meet applicable regulations and CP conditions. Further, a CP holder seeking withdrawal of the CP should submit suitable plans for termination of site activities and site redress. Last, if applicable, the CP holder must take actions to assure that the facility cannot be used as a utilization facility.

While the COL holder, like the CP holder, must continue to follow all applicable requirements pending termination of the COL, there are several aspects of this part of the Policy Statement that would not apply to COLs or that should be clarified, as discussed below.

CPs have expiration dates, but COLs do not expire before the § 52.103(g) finding. Because COLs do not expire during construction, the discussion of expiration of the CP in the Policy Statement does not apply to COL holders.

In Policy Statement § III.B.1, "Plant Termination," the Commission provides that, per 10 C.F.R. § 51.41, the CP holder seeking permit withdrawal "should" submit site redress plans "for staff approval." This reference to site redress plans warrants the following clarification. Section 51.41 does not require the submission of site redress plans, but does provide, as relevant here, that the Commission may require information from applicants for a permit, license, or other form of permission, as may be useful in aiding the Commission's compliance with Section 102(2) of NEPA. Regulatory practice indicates that CP holders requesting withdrawal of the permits have provided information supporting preparation of an environmental assessment for the NRC action to terminate the permit. For example, in two relatively recent CP terminations (for Bellefonte Nuclear Plant, Units 1 and 2, and Washington Nuclear Project, Unit 1), the NRC issued environmental assessments in support of CP termination.[11] These environmental assessments discussed the licensee's planned activities related to the site, but significant structures at the site were to remain intact.[12]

The Policy Statement does not address plants for which construction has not begun. Terminating a COL for plants where construction has not commenced would not involve consideration of impacts from NRC-licensed activities. Therefore, environmental information from the COL holder should be unnecessary. This is the case even if the licensee has undertaken so-called "preconstruction" activities (e.g., excavation, erection of construction support buildings, road construction, fencing, etc.). Preconstruction activities are excluded from the definition of construction in 10 C.F.R. § 50.10(a) and may be undertaken without an NRC license.[13] While preconstruction activities are considered in the COL review as part of the cumulative impacts assessment, cumulative impacts are defined in terms of the combination of impacts from the Federal action (e.g., construction and operation impacts authorized by the COL) with "other past, present, and reasonably foreseeable future actions."[14] The COL review considers the combined impacts from construction and preconstruction because both

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[10] The Policy Statement does not indicate that the request for withdrawal of the CP must follow a particular format.

[11] *See* 71 Fed. Reg. 50,948 (Aug. 28, 2006) (Bellefonte); 71 Fed. Reg. 52,824 (Sept. 7, 2006) (Washington).

[12] *Id.*

[13] *See* § 50.10(a)(2) (listing activities excluded from the definition of construction).

[14] *See* 40 C.F.R. § 1508.7 (defining cumulative impacts).

construction and preconstruction activities are contemplated. But if construction never begins, then there is no combination of Federal action impacts with other impacts, i.e., there are no cumulative impacts. Thus, the preconstruction impacts are independent of the NRC action and do not need to be considered in the decision to terminate the COL.

With respect to license termination, NRC requirements in § 52.110 for COLs mirror those in 10 C.F.R. § 50.82 for plants licensed under Part 50.[15] Section 52.110 has requirements for permanent cessation of operation and permanent removal of fuel (§ 52.110(a), (b)); requirements for decommissioning (§ 52.110(c)-(h), (l)); and requirements for license termination (§ 52.110(i)-(k)).

Consistent with NRC practice under Part 50, the NRC staff does not view § 52.110 as applying to plants that have not begun operation. The organization of § 52.110 generally follows the license termination process for an operating plant, from permanent cessation of operation to permanent removal of fuel to decommissioning activities to license termination. Also, the vast majority of the requirements in § 52.110 either explicitly refer to, or make sense only in the context of, a plant that has operated and is undergoing decommissioning. While it is true that § 52.110(i) requires "[a]ll power reactor licensees" to submit a license termination plan, the quoted language should be understood in context to refer to all power reactor licensees that commenced operation. The "[a]ll power reactor licensees" language also appears in 10 C.F.R. § 50.82(a)(9) and CPs are included in the 10 C.F.R. § 50.2 definition of "License," but the NRC does not apply the similar requirements in § 50.82 to CP holders, only to holders of OLs.[16] Finally, in promulgating § 52.110, the Commission expressed its intent that § 52.110 and its companion regulation § 52.109 be analogous to the requirements in 10 C.F.R. §§ 50.51 and 50.82 for permanent shutdown of a nuclear power plant, its decommissioning, and the termination of the Part 50 OL.[17] For these reasons, the NRC staff position is that § 52.110 applies only to plants for which the Commission has made the finding under § 52.103(g) and that have begun operation.

In terminating a COL, consideration must be given to the licenses under 10 C.F.R. Part 30, 40, and 70 that are included in the COL. Termination of the licenses under Parts 30, 40, and 70 would be accomplished under the regulations in those parts.

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[15] *Compare* 10 C.F.R. § 52.110 *with* 10 C.F.R. § 50.82.

[16] The Policy Statement provides that a CP holder may request withdrawal of its CP and does not cite to § 50.82. Also, the final rule promulgating the "[a]ll power reactor licensees" language in § 50.82(a)(9) was directed at holders of OLs, not CPs. *See* "Decommissioning of Nuclear Power Reactors," 61 Fed. Reg. 39,278 (July 29, 1996). Consistent with this, the staff examined several CP terminations since the 1996 rule, and none of these cite, or otherwise address, § 50.82. *See* Order Revoking Construction Permit No. CPPR-154, 64 Fed. Reg. 4725 (Jan. 29, 1999) (Washington Nuclear Project, Unit 3); Letter from Catherine Haney to Karl W. Singer (Sept. 14, 2006) (ADAMS Accession No. ML061810505) (Bellefonte Nuclear Plant, Units 1 and 2); Letter from Catherine Haney to J. V. Parrish (Feb. 8, 2007) (ADAMS Accession No. ML070220011) (Washington Nuclear Project, Unit 1).

[17] Licenses, Certifications, and Approvals for Nuclear Power Plants, 72 Fed. Reg. 49,352, 49,390 (Aug. 28, 2007) (final rule).

Measures that Should Be Considered for Reactivation or Transfer of Ownership of Terminated Plants (Policy Statement § III.B.2)

The last section of the Policy Statement addresses considerations for CP holders who want to maintain the options of reactivation or transfer (*i.e.*, sale). Regarding sale, the CP holder should, among other things, assure that the proper documentation is provided to a new owner. Regarding reactivation, the Policy Statement notes that if a CP holder properly develops and implements preservation and documentation programs, then a terminated plant may be reactivated like a deferred plant. Last, the Policy Statement reminds CP holders of the need to seek CP extensions.

This section of the Policy Statement should be applied to a COL holder with the caveat that CP extensions are not needed. If the utility still holds its COL, then the license may be transferred to another person in accordance with NRC requirements.[18] It is up to the licensee and transferee to initiate a license transfer application to the NRC. If a license transfer application is submitted, the NRC will at that time evaluate the proposed transfer in the context of its license transfer regulations.

Additional Matters Beyond the Policy Statement

Included licenses

As explained above, the Policy Statement was written in the context of construction under a Part 50 CP and does not address Part 52. CPs did not include materials licenses, but COLs include materials licenses issued under Parts 30, 40, and 70. COL holders in deferred or terminated status must maintain compliance with these materials licenses and the associated regulations. Any request to terminate a COL must account for the included materials licenses, and these materials licenses would be terminated under the regulations in 10 C.F.R. Parts 30, 40, and 70.

[18] *See* 10 C.F.R. § 52.105 (a combined license may be transferred in accordance with § 50.80); 10 C.F.R. § 50.80(b)(1)(iii), (b)(2).