



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

November 1, 2018

Paul Bembia, Director  
West Valley Site Management  
New York State Energy Research  
and Development Authority  
9030-B Route 219  
West Valley, NY 14171-9500

SUBJECT: EVALUATION OF THE INSTALLATION AND SUBSEQUENT OPERATION,  
MAINTENANCE AND REMOVAL OF A SOLAR PHOTOVOLTAIC FACILITY ON  
A NON-IMPACTED AREA OF THE LICENSED AREA, REVISION 0, DATED  
JUNE 2018

Dear Mr. Bembia:

The U.S. Nuclear Regulatory Commission (NRC) staff is responding to the New York State Energy Research and Development Authority's (NYSERDA) June 19, 2018, letter (Agencywide Documents Access and Management System [ADAMS] Accession No. ML18222A219) requesting that the NRC staff conduct a screening of NYSERDA's information package, titled "Evaluation of the Installation and Subsequent Operation, Maintenance, and Removal of a Solar Photovoltaic Facility on a Non-Impacted Area of the WNYNSC" (Western New York Nuclear Service Center) (ADAMS Accession No. ML18222A218) and provide comments or questions related to the submitted information package. Within the information package, NYSERDA included its Title 10 of the *Code of Federal Regulations* (10 CFR) 50.59<sup>1</sup> evaluation (Section 4.0) for this proposed activity to determine if a license amendment must be obtained from the NRC. Since your 10 CFR 50.59 evaluation concluded that the proposed activity was within the licensing safety envelope, there was no need to seek specific NRC approval or comments. The NRC staff reviewed this package as a courtesy, however future NYSERDA 10 CFR 50.59 evaluations should be reviewed during the inspection process.

The NRC staff reviewed the section of the evaluation entitled "Documentation that the Area Identified for the Project is Non-Impacted" in order to assess NYSERDA's justification for concluding that the area is non-impacted. NUREG 1575 "Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM)," Revision 1 (ADAMS Accession Nos. ML003761445 and ML003761454),<sup>2</sup> defines non-impacted areas as areas that have no reasonable potential for residual contamination. The NRC staff noted that the 53.6-acre property identified for

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<sup>1</sup> The 10 CFR 50.59 rule controls changes, tests, and experiments performed by a 10 CFR Part 50 licensee. The 10 CFR 50.59 regulations provide a threshold for determining when NRC approval of changes, tests, or experiments is required.

<sup>2</sup> NUREG-1575 provides detailed guidance for planning, implementing, and evaluating environmental and facility radiological surveys conducted to demonstrate compliance with a dose- or risk-based regulation. The MARSSIM guidance focuses on the demonstration of compliance during the final status survey following scoping, characterization, and any necessary remedial actions. The NRC staff believes that the use of this guidance is appropriate even though NYSERDA is not at this time submitting an application for the release of any portion of the licensed area.

construction appears to fit the MARSSIM definition of non-impacted based on the NRC staff's review of the historical site information provided by NYSERDA. Also, the data from the aerial gamma radiation surveys have not identified any radioactivity levels substantially above background levels in the proposed solar photovoltaic facility area. The NRC understands that the proposed solar photovoltaic facility would be located more than 300 feet from the potentially impacted underground areas surrounding the Bulk Storage Warehouse. The NRC concurs that this distance would provide a sufficient buffer to conclude that the 53.6-acre selected area is likely non-impacted. The NRC staff understands that the solar photovoltaic facility would be located more than 100 feet from the nearest hydrofracture test well in order to provide adequate working space for Phase 2 decommissioning activities. While these distances appear adequate to prevent the land areas from becoming radiologically impacted, NYSERDA must ensure controls and procedures are implemented to prevent the area from being impacted by current and future decommissioning activities.

The NRC staff also reviewed NYSERDA's 10 CFR 50.59 determination that provided NYSERDA's conclusion that construction of a solar photovoltaic facility on the NRC Retained Premises<sup>3</sup> would not require an amendment to its 10 CFR Part 50 license, NRC License No. CSF-0001, based on the 10 CFR 50.59 evaluation. NYSERDA appears to have correctly followed the guidance in Regulatory Guide 1.187, "Guidance for Implementation of 10 CFR 50.59, Changes, Tests, and Experiments," Revision 1 (ADAMS Accession No. ML003759710).

The U.S. Department of Energy (DOE), under the West Valley Demonstration Project (WVDP) Act, continues to conduct active decommissioning of the reprocessing facility. Based on NYSERDA's information package, the NRC staff understand that NYSERDA would establish protocols to authorize workers access to the facility, as needed, in order to maintain the function of the Exclusion Area as described in the final safety analysis report (FSAR). The NRC staff suggest that NYSERDA review its license to determine whether there are any additional requirements of the license that would need to be followed. NYSERDA is responsible for safely conducting work activities (whether they be conducted by NYSERDA or others) in the NRC Retained Premises in accordance with its license irrespective of whether a license amendment is required.<sup>4</sup> Further, the NRC staff note that the NRC Retained Premises remains subject to inspection.

Also, the NRC noted that in the DOE's August 8, 2017, letter to NYSERDA that was included as Appendix G of NYSERDA's information package, DOE stated that, "Based on the information you have provided, EMCBC-WV (DOE Environmental Management Consolidated Business Center – West Valley) sees no violation to Section 4.02 of the Cooperative Agreement. EMCBC-WV expressly reserves it[s] right to re-evaluate its position if a fully detailed design package for the CDG Solar Facility project becomes available." Similarly, the NRC may examine any completed design package that becomes available for further evaluation of the project and to verify that License Condition No. 7.D. continues to be met.

In accordance with 10 CFR 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter will be available electronically for public inspection in the NRC Public

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<sup>3</sup> NRC Retained Premises – licensed area consisting of the WNYNSC not including the DOE WVDP Retained Premises and the State-Licensed Disposal Area.

<sup>4</sup> Unless DOE takes responsibility under Section 4.12 of the Cooperative Agreement between DOE and NYSERDA.

Document Room or from the Publicly Available Records component of NRC's ADAMS. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

If you have any questions or need any additional information regarding our comments, please contact me at 301-415-6822.

Sincerely,

*/RA/*

Amy M. Snyder, Senior Project Manager  
Reactor Decommissioning Branch  
Division of Decommissioning, Uranium Recovery,  
and Waste Programs  
Office of Nuclear Material Safety  
and Safeguards

cc:

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SUBJECT: NYSERDA'S EVALUATION OF THE INSTALLATION AND SUBSEQUENT OPERATION, MAINTENANCE AND REMOVAL OF A SOLAR PHOTOVOLTAIC FACILITY ON A NON-IMPACTED AREA OF THE WNYNSC, REVISION 0  
**NOVEMBER 1, 2018**

**DISTRIBUTION:**

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**ADAMS Accession No.: ML18290A566**

**\*via email**

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