

March 10, 1977

NOTE TO: Walter Butler, Branch Chief
Division of Operating Reactors

You have indicated recently some concern about the scope of review in connection with amendments to operating licenses. I hope that it may be helpful to you if I put a few thoughts down which may clarify the nature of the authorization associated with an operating license amendment.

1. The findings required by our regulations in order to support the issuance of an amendment to an operating license are not specifically set forth in Part 50. They are described generally in §50.91 which indicates that the Commission will be guided by the considerations which govern the issuance of initial licenses. . . to the extent applicable and appropriate. For operating license amendments, this directs one to §50.57 which sets forth the findings required to support the issuance of an operating license. Some of these findings are not relevant to amendments and are left out of our standard form of operating license amendment (e.g., the finding that construction has been completed, the finding that the applicant is technically and financially qualified, and the finding that the provisions of Part 140 have been satisfied).

However, in connection with an amendment, all of these findings are limited to subject matter of the amendment. With respect to portions of the operating license not affected by the amendment, the license continues in full force and effect as issued. That is, the license amendment deals only with the "new" authorization represented by the amendment.

If in the course of the staff review of an amendment or in the course of any other aspect of the Commission's regulatory process, the staff receives information that would lead it to conclude that operation of the facility or the actual design of the facility does not in fact conform to the provisions of the license or to any applicable Commission regulation, the proper course of conduct is to follow the procedures set forth in Part 2 which would lead to the modification or suspension or other appropriate action with respect to the license. These include as appropriate notices of violation, order to show cause, order for modifications of license, civil penalties, et sec. The procedures set forth in those sections specify the appropriate procedures to be followed to achieve the corrected action with respect to outstanding authorizations or licenses of the NRC.

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If you uncover an aspect of the facility which you believe does not conform to the license or Commission regulations which is not within the subject matter of the amendment, the staff should resolve at a fairly high level what course of corrective action will be taken before the amendment is actually issued. It would appear inappropriate to provide the "new authorization" covered by the amendment while we were still considering action which might eliminate the underlying basic authority to operate. So we should resolve the question of violations (or safety deficiency, if any) with respect to the underlying license at least to the extent of determining our course of action before we finalize action on the amendment.

To summarize, there is a substantial procedural distinction between: (1) the issuance of an amendment in which the burden is on the applicant to demonstrate that the new authorization conforms to the standards of §50.57 with respect to the activity or change which is to be authorized by the amendment; and (2) an order or other action taken to correct a newly identified or newly recognized violation of a license, violation of a regulation or safety deficiency.

I hope this sheds some light on the scope of review involved in the authorization of an amendment. As I indicated to you, the findings set forth in the amendment are read to be conclusions with respect to the subject matter of the amendment. I believe that in the present form of license amendment this is sufficiently implicit. However, I have brought to Mr. Engelhardt's attention your suggestion that the standard form of operating license amendment be modified to include language which makes clear that the findings set forth therein go only to the scope of the subject matter of the amendment.

2. With respect to the subject matter of the amendment, the regulations require a finding that the modified facility design or operating technique will be such that the facility will operate in conformance with the Commission's Rules and Regulations. In attempting to make this determination, and in order to make more efficient use of manpower, the staff relies upon and uses the various customs and practices reflected in regulatory guides and the standard review plan. Once the staff concludes a given system or component satisfies the current version of a regulatory guide or SRP, that is about all we do to support an assertion of compliance with the applicable Rules and Regulations. (Most of the regulatory guides and SRP, have some self-contained reference to applicable general design criteria, etc.)

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Although this is a general practice, it is important to emphasize that compliance with standard review plans and regulatory guides are not mandated by the Commission. What is mandated by the Commission is compliance with the regulations, including applicable provisions of the general design criteria. This distinction is important! Compliance with an SRP or regulatory guide, does not automatically constitute a conclusive demonstration of compliance with the Commission regulations. For example, presently in the Hartsville proceeding, the staff has had to provide substantial supplemental testimony in order to make the connection between an SRP position and requirements of the Commission regulations.

In a similar vein, non-conformance with an SRP or regulatory guide does not per se constitute non-conformance with the Commission regulations. As the regulatory guides themselves indicate, they reflect only one satisfactory way of responding to the applicable Commission regulation and there may be other acceptable ways. Consequently, we must review a particular design to determine whether or not it conforms to the Commission's regulations.

Furthermore, it is essential to recognize that non-conformance to the general design criteria does not automatically mean that the design, component or facility may not be licensed. Each of the general design criteria often indicates that alternative methods are appropriate. The introduction to the general design criteria indicates that each criterion may not necessarily be required for every facility. Consequently, we must judge facility safety against the general design criteria; but this is the beginning but not the end of the inquiry. It may be that the facility can be authorized to operate with a design that does not correspond on all fours with the specific language of a particular criterion. Such authorization may entail alternative authorization procedures, such as an exemption, etc.

I wish to reiterate non-conformance in a specific general design criteria does not automatically mean that the facility is not licenseable. Indeed, we do have procedures which may permit it to be licensed provided the acceptability of operation with the particular deviation is carefully described.

The one unwaivering finding, which is required no matter which procedure is used, is the finding that there is reasonable assurance that the facility can be operated without endangering public health and safety. Provided we can indeed justify the safety of operation of the facility, our regulations have various procedures which enable the Commission to permit facility operation. However, I repeat all

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of these procedures require a well developed basis for concluding that the plant is safe to operate. The principal thrust of the staff review is the determination of whether the facility is safe to operate. The staff's judgment as to safety should be made in light of the Commission regulations, including the general design criteria; but that safety judgment is not limited to a simple judgment of conformance with the particular criterion involved. If it does not conform, the staff's judgment must go beyond that to judge whether the particular plant involved is nevertheless safe to operate, and must carefully justify any such conclusions.

Regulatory guides and standard review plans, may be used by the staff to shortcut much of the ad hoc analytical work that would otherwise be needed, however, conformance is not per se a conclusive demonstration of compliance with the Commission regulations; and non-conformance with regulatory guides and standard review plans does not conclusively demonstrate that the plant may not be licensed.



Joseph F. Scinto
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cc: V. Stello

R. Boyd (P.S. The information in the second part has some relevance for your area of responsibility. However, for cases before Licensing Boards for adjudication, the Staff does not have unilateral exemption authority. Consequently, any such instance involving exemptions will require special treatment. However, the cases under your purview, which relate to the new C.P.'s and O.L.'s, should very seldom involve exemptions.)

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