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(58FR 58664)

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GE Nuclear Energy

Steven A. Hucik
Manager: ABWR Projects

General Electric Company
175 Curtner Avenue, M/C 780; San Jose, CA 95125-1014
408 925-6951 (phone) 408 925-4257 (facsimile)

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January 5, 1994

Mr. Samuel J. Chilk
Secretary, Office of the Secretary
of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

SUBJECT: "Rulemakings to Grant Standard Design Certification for Evolutionary Light Water Reactor Designs," Advanced Notice of Proposed Rulemaking (58 Fed.Reg. 58664 (Nov.8,1993)).

Dear Mr. Chilk:

General Electric Company (GE) provides the following comments on the above-referenced advanced notice of proposed rulemaking (ANPR).

GE participated in the preparation of and fully supports the detailed comments submitted on behalf of the nuclear energy industry by the Nuclear Management and Resources Council (NUMARC). We share the NUMARC view that the ANPR provides a good starting point for the development of a specific design certification rule, but that certain revisions and additions, as set forth in the NUMARC comments, should be made by NRC in formulating the proposed rule's final form and content. GE would especially emphasize in these comments its particular concerns regarding three ANPR proposals which, if adopted, would adversely impact design certification rulemaking and subsequent Part 52 licensing. The three ANPR positions which warrant the Commission's special attention and which GE strongly disagrees with are: (1) the proposed incorporation by reference in the rule of Tier 2 secondary references; (2) the proposed inclusion in the rule of so-called "applicable regulations" as new, "broadly stated", free standing regulations; and (3) the creation in Tier 2 of a new subset of requirements singled out for special change restriction (so-called Tier 2*). We would additionally urge the Commission to sanction issuance of Final Design Approvals (FDAs) for the pending ELWR applications prior to NRC approval of Design Control Documents (DCDs) for their rulemakings. The basis for our position on each of these matters is stated below. Early Commission guidance on these matters, and on the other issues addressed in the NUMARC comments, is essential if the schedules set previously by the NRC staff and approved by the Commission are to be met.

Secondary References

GE strongly objects to the proposed requirement that selected secondary references in Tier 2 of the DCD be incorporated as primary references in the specific design certification rules. The basis for our objection is fully set forth in Reference 7 to the NUMARC comments. In substance: Incorporation by reference of Tier 2 secondary references is not legally required; as a practical matter, such a process will diminish certainty in Part 52

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implementation rather than enhance it; and efforts to implement such a course – which involves the contextual analysis of and selection from many hundreds of Tier 2 secondary references – will cause major and costly disruption to FDA and design certification rulemaking schedules. Importantly, moreover, this course will provide no increased safety or other discernible benefit. Accordingly, GE agrees with the industry recommendation that such incorporation by reference should be limited to Tier 1 references. As elaborated more fully in Reference 7 to the NUMARC comments, such a course is consistent with the two-tier structure of 10 CFR Part 52 and can be practicably implemented in design certification rulemaking and Part 52 licensing.

"Applicable Regulations"

GE additionally recommends that the Commission disapprove the NRC staff's proposal in Section A.7 of the Draft Proposed Standard Design Certification Rule to separately codify in the rule – as "broadly stated", free standing, "applicable regulations" – Commission-approved staff positions which go beyond currently established regulatory requirements. Such requirements, we submit, need not be separately adopted as regulations in the design certification rule since Commission-approved staff positions will be reflected in the Tier 1 and Tier 2 design requirements of the DCD which, in turn, will be incorporated in the rule. Thus, these requirements will constitute a part of "applicable regulations" (i) at the time of design certification rule (DCR) issuance, (ii) for purposes of §52.63 backfitting and (iii) at the time of DCR renewals – the three areas of ostensible staff concern. The course proposed by the staff would enormously complicate pre-rulemaking preparation, the conduct of the rulemakings themselves and COL licensing and post-licensing facility construction and operation. It would, moreover, impose schedule delays and generate needless duplication, if not outright conflicts. We are additionally concerned that such "broadly stated" regulations carry the potential for later differing interpretations, thus undermining the certainty and stability which are major Part 52 objectives.

Pre-Designation of "Unreviewed Safety Questions"

GE also has serious reservations concerning the proposed pre-designation by the NRC staff (in Section A.3 of the Draft-Proposed Standard Design Certification Rule) of certain Tier 2 design information, a change from which would automatically constitute an unreviewed safety question, thus foreclosing use of the Section 50.59 change process. Creation of this de facto third tier is unnecessary and at odds with the two-tier rule structure which is an essential Part 52 feature. As more fully explained in NUMARC's detailed comments, there is a less burdensome alternative that will accommodate the staff's desire for pre-implementation review of contemplated changes in selected areas and we recommend its careful consideration by the Commission. Whichever alternative is adopted, however, we urge that such design areas be narrowly limited and that the matters covered be specified in precise terms. To do otherwise would undercut the Tier 2 change process which is an integral aspect of design certification rules and their subsequent Part 52 licensing implementation.

FDA/DCD Separation

Finally, GE requests that the Commission endorse staff issuance of an FDA prior to completion of the DCD approval process. As the staff has acknowledged, such a course is

consistent with Part 52 requirements, since the DCD relates only to certification rulemaking. Resolution of DCD format issues – which could take some months – should not affect the content of an FDA-approved design, and separation of the two issuances would allow the design review process to be completed within a time frame consistent with current NRC-approved schedules. In sum, the separation that we recommend would not affect the content and completeness of the safety review and approval embodied in the FDA.

GE appreciates the opportunity to comment on the ANPR and commends the Commission for affording this means to receive public input on key design certification issues. As earlier emphasized, we urge prompt resolution of the issues addressed herein and in the NUMARC comments since we believe this to be critical for the timely initiation of design certification rulemakings.

Sincerely yours,

Steven A. Hucik

Steven A. Hucik

cc: D.M.Crutchfield (NRC Staff)
W.H.Rasin (NUMARC)
S.Franks (DOE)
J.F. Quirk (GE)
J.K. Restrick (GE)
D.R. Wilkins (GE)
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