



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

September 08, 2020

Mr. Doug True
Nuclear Energy Institute
1201 F Street, NW, Suite 1100
Washington, DC 20004

SUBJECT: Part 50/52 Lessons-Learned Rulemaking: U. S. Nuclear Regulatory Commission
Transparency and Stakeholder Engagement

Dear Mr. True:

In the Nuclear Energy Institute's (NEI) letter dated March 9, 2020, on the U.S. Nuclear Regulatory Commission's (NRC) ongoing rulemaking regarding Title 10 of the *Code of Federal Regulations* (10 CFR) Parts 50, "Domestic Licensing of Production and Utilization Facilities," and 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," NEI requested that NRC increase its transparency of the rulemaking, and NEI's letter provided specific examples of topics warranting additional public interaction. In response to NEI's request, NRC held a public meeting on April 29, 2020, where those example topics were discussed, and staff's draft preliminary recommendations on a few other rulemaking items were presented to provide transparency with respect to the staff's evaluation process. One of the specific examples NEI identified in its letter, and that NEI requested a written response to, was the issue of "delays in issuance of COLs due to errors in a certified design". While this matter was considered as a possible topic to be addressed in the Part 50/52 rulemaking, the NRC staff has determined that it will not consider this topic further due to regulatory and legal constraints, as discussed below.

The Atomic Energy Act of 1954, as amended (AEA), requires the NRC to make final safety findings for both construction and operation when it issues a combined license (COL). In making these findings for a COL applicant that references a design certification (DC), the NRC relies on safety findings made during the DC review. This reliance, though, must be reasonable and the staff has committed to not delay COL issuance because of non-substantive errors. The NRC has previously communicated to industry on this matter¹. Alternatively, if the NRC has identified a significant error in a design control document (DCD) that undermines the statutory requirements involved with a COL safety finding, the staff may issue the COL only after the error is adequately addressed such that the required finding can be made.

While rulemaking is generally the preferred method for addressing DCD errors that meet the criteria of 10 CFR 52.63, "Finality of standard design certifications," it is by no means the only way. As noted in the NRC letter to Duke Energy Florida (Agencywide Documents Access and Management System (ADAMS) Accession No. ML15083A218), such errors can also be addressed on a plant-specific basis through existing regulatory processes. Another means, as

¹ NRC Letter to Christopher Fallon, Duke Energy Florida, dated April 15, 2015, Subject: Request for Guidance Clarifying Appropriate Methods for Resolving Generic Errors in Certified Design Information (ADAMS Accession No. ML15083A218)

identified in a July 18, 2016, letter from NRC to NEI², is that, depending on the circumstances, it may be preferable to address such issues through a plant-specific action, including departures or orders, instead of, or prior to, undertaking a rulemaking to amend the DCD. This departure process is well established, and once a technical solution has been developed by the vendor and applicant, the process can be applied globally to provide more timely resolutions for significant certified design errors to allow issuance of the COL.

Each of the identified methods above have been found to be reasonable and achievable by the staff, as they are established NRC processes that align with the agency's Principles of Good Regulation. Notably, the Commission has also addressed the question of delays in DC issuance and their effect on COL licensing in "Conduct of New Reactor Licensing Proceedings; Final Policy Statement" (73 FR 20963). Specifically, the Commission provided the following response to a comment on DC errors and COL licensing:

Comment: The Commission need not delay issuance of a COL referencing a design certification application (DCA) until the certification rule is final, absent a legal prohibition. A COL license condition premised on promulgation of the DC rule could be imposed, allowing any judicial challenge to be raised in a timely manner without adversely impacting the COL. (GE-Hitachi 2, NEI 7)

NRC Response: As the comment recognizes, the AEA requires the NRC to make certain findings before issuing a license. While a license condition may, in some instances, impose specific design or operational requirements to allow the NRC to make the required findings, a license condition may not be used to defer the required findings beyond the issuance of the license, e.g., in order to complete a rulemaking. The Commission believes that the approach proposed in the comment may be inconsistent with the AEA in this respect, and so declines to adopt it.

The Commission additionally noted in the same policy statement that applicants should coordinate with vendors to ensure that decisions on DC applications do not impede decisions on COL applications (73 FR at 20972 – 20973). If there is a delay in the DC rulemaking, a COL applicant may request an exemption from one or more elements of the requested DC or proceed by using the "custom COL" approach. Specifically, an individual applicant may choose to request that the application be treated as a "custom" design, and thereby resolve any specific technical matter in the context of its individual application. An applicant might choose such a course, for example, if the referenced DCA were denied, or if issues causing delay in the DC review or rulemaking impeded a COL applicant's ability to effectively coordinate with the design vendor.

² NRC Letter to Anthony R. Pietrangelo, Nuclear Energy Institute, dated July 18, 2016, Subject: Management of Design Certification Errors in Combined License Applications (ADAMS Accession No. ML15351A021)

In summary, due to constraints of the AEA, as previously communicated to the industry, the NRC staff has determined that the ongoing Part 50/52 rulemaking will not propose revisions to the requirements regarding design errors and COL issuance. As noted above, there are already multiple regulatory processes available to address and resolve such issues. I appreciate the opportunity to address this important regulatory matter raised in NEI's letter.

Sincerely,

/RA/

Anna H. Bradford, Director
Division of New and Renewed Licenses
Office of Nuclear Reactor Regulation

cc: Marcus Nichol, NEI

SUBJECT: PART 50/52 LESSONS-LEARNED RULEMAKING: U. S. NUCLEAR REGULATORY COMMISSION TRANSPARENCY AND STAKEHOLDER ENGAGEMENT DATED SEPTEMBER 08, 2020

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