

POLICY ISSUE
NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Commissioner Hanson
SUBJECT: SECY-20-0082: Rulemaking Plan to Extend the Duration of the AP1000 Design Certification

Approved X Disapproved X Abstain Not Participating

COMMENTS: Below Attached X None

Entered in STARS

Yes X
No

Signature
October 27, 2020

Date

Commissioner Hanson's Comments on SECY-20-0082: "Rulemaking Plan to Extend the Duration of the AP1000 Design Certification"

I approve in part and disapprove in part the staff's rulemaking plan proposed in SECY-20-0082. Although I commend the staff for thinking critically about meeting emerging needs with efficiency, there are issues of transparency raised by this rulemaking effort that necessitate Commission engagement, further evaluation, and public involvement. Therefore, I approve the staff's recommendation to proceed with the rulemaking effort to extend the duration of the design certification for the AP1000, but I disapprove staff's recommendations to 1) designate signature authority to the EDO, 2) proceed without development of a regulatory basis, and 3) use the direct final rulemaking path.

Our central mission at the NRC is to ensure the adequate protection of public health and safety, and our regulatory structure provides the means to do that. With every rulemaking effort, we should closely evaluate our purpose and assure that any changes to the regulatory structure are transparent and in furtherance of the mission. I understand the staff's larger goal to evaluate our existing regulatory structure in Parts 50 and 52, which I am not opposed to. I am also not opposed to any future efforts to generically address questions such as whether the current regulatory requirement concerning design certification duration continues to serve its original purpose. However, the staff has not adequately addressed how its rulemaking plan will disposition the known technical deficiencies of the AP1000 design while maintaining the integrity of our current regulations in Part 52. Any plan to resolve these technical deficiencies should be done transparently and with an opportunity for public feedback.

In order to accomplish this rulemaking, the staff must determine that the AP1000 design continues to meet the criteria for a design certification under 10 C.F.R § 52.54. This includes making a finding that there is reasonable assurance that the standard design conforms with the provisions of the Atomic Energy Act and the Commission's regulations. The AP1000 certified design was never amended to address the known deficiencies. The staff states that the deficiencies will be assessed as part of the rulemaking and could be "carved out" of the design certification, provided that the design remains essentially complete, an approach to which I am not generally opposed. However, this determination should be clearly documented and accompanied by a fully developed regulatory basis made available to the public. Given the uncertainties regarding carve-outs and essential completeness, I see no reason to truncate our public-facing deliberative process to accelerate the timeline of this proposed rulemaking.

Therefore, the staff should develop a regulatory basis and provide the Commission a draft rule for its consideration. In its development of the proposed rule, the staff should 1) consider available options, including but not limited to the use of carve-outs to address the known technical deficiencies in the AP1000 design and whether it may be appropriate to use 10 C.F.R. § 52.63 to revise portions of the current AP1000 certified design to incorporate established fixes for these deficiencies; 2) clearly justify the chosen approach and demonstrate its compliance with our regulations, particularly the findings necessary under 10 C.F.R § 52.54; 3) address the concept of "essentially complete design" vis-à-vis "carve outs" for specific issues, if applicable; and 4) ensure transparency and public involvement throughout the process.