

POLICY ISSUE
NOTATION VOTE

RESPONSE SHEET

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

Approved Disapproved Abstain Not Participating

COMMENTS: Below Attached None

Entered in STARS

Yes

No

Signature

11/6/20

Date

**Commissioner Baran’s Comments on SECY-20-0082,
“Rulemaking Plan to Extend the Duration of the AP1000 Design Certification”**

NRC promulgated a rule to certify the AP1000 design in 2006. Under NRC’s Part 52 regulations, the design certification is valid for 15 years and will expire on February 27, 2021. In this paper, the staff proposes to initiate a rulemaking to extend the AP1000 design certification for an additional 5 years, which would allow the design to be referenced by a combined license applicant until February 27, 2026. The staff is aiming to complete the rulemaking by the February 2021 expiration date and believes the rulemaking would be noncontroversial. For these reasons, the staff recommends using a direct final rule.

Westinghouse previously discovered several technical issues with the certified design related to (1) the passive core cooling system containment condensate return, (2) main control room dose, (3) main control room heatup, (4) hydrogen vent ITAAC, and (5) neutron flux operating bypass.¹ To address these issues, the Levy, Lee, and Turkey Point AP1000 combined license applications required departures from the certified design and related exemption requests. In other words, the technical issues were resolved, and those fixes were incorporated into the combined licenses.² The certified design itself was not updated to address the technical issues.

This makes it challenging to extend the design certification in the way proposed by the NRC staff. Given the significance of the technical issues left uncorrected in the certified design, the staff may be unable to make the necessary safety findings under § 52.54 to extend the certification period. To avoid this problem, the staff could potentially carve out these issues from the certification and leave them to be addressed by future combined license applicants. But if major features of systems like the emergency core cooling system are left out of the certified design, that may mean that the design is not “essentially complete,” as required by Part 52. Moreover, because of these difficulties, a direct final rule done in this manner is more likely to yield significant adverse comments from stakeholders, which would require the agency to abandon the direct final rule and proceed with a traditional notice and comment rulemaking.

I therefore approve a modified version of the staff’s rulemaking plan. In my view, it would be better to proceed with a direct final rule that both (1) updates the certified design under § 52.63 to address the outstanding technical issues and (2) extends the duration of the AP1000 design certification by 5 years. This would ensure that the certified design is up-to-date and allow the NRC staff to make the required safety findings, as it did for the AP1000 combined licenses. By keeping the agency’s focus on safety and completeness of the design, this approach should also decrease the chances that the direct final rule will elicit significant adverse comments. Although this approach probably will not be completed by February 2021, it still has the potential to be substantially quicker than a full notice and comment rulemaking, which is what the staff’s recommended approach is likely to ultimately entail.³ If there is a period when the AP1000 design certification has expired, a potential combined license applicant could still

¹ More information about these issues is provided in SECY-16-0076, “Staff Statement in Support of the Uncontested Hearing for Issuance of Combined Licenses for the Levy Nuclear Plant Units 1 and 2” (ML 16214A173).

² These changes were also made to the licensing basis for Vogtle Units 3 and 4 through license amendments and exemptions.

³ I agree with Commissioner Hanson that proceeding with a full notice and comment rulemaking is another viable approach, which would ensure that the agency remains focused on safety and public participation.

reference the certified design without the benefit of the issue finality provisions that would otherwise apply.

Given that a direct final rule structured in this way will be more technically substantive than the staff's proposed version and will implement the § 52.63 rulemaking process for the first time, the staff should send the draft direct final rule to the Commission for its review and approval prior to publication in the *Federal Register*.