

OFFICE OF NUCLEAR REACTOR REGULATION RESPONSE TO

ABILENE CHRISTIAN UNIVERSITY

REQUEST FOR INTERPRETATION OF 10 CFR 50.10

INTRODUCTION:

By letter dated November 30, 2020 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML20366A053), Abilene Christian University (ACU) requested that the U.S. Nuclear Regulatory Commission (NRC) staff respond to questions stated in a request for regulatory interpretation regarding the regulatory process for and applicability of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.10, "License required; limited work authorization," paragraph (a)(2)(x), to the erection of the Science and Engineering Research Center (SERC), a building that ACU plans to construct. The planned SERC would include space for a potential Molten Salt Research Reactor (MSRR).

Because the information provided in ACU's November 30, 2020, letter is preliminary and does not constitute a license application, the following NRC staff responses do not constitute either a review or approval of the design of the planned SERC or MSRR or a verification that the SERC or MSRR will be constructed or perform as described. Additionally, the NRC staff understands that, based on the descriptions in ACU's letter, the SERC would be a functioning building that would have space for, and would be designed and built to accommodate, a future MSRR. As a result, the erected building could contain items that ACU, in the future, could identify or rely on as MSRR facility structures, systems, or components (SSCs).

If the actual SERC and/or MSRR differ from the descriptions and information in ACU's November 30, 2020, letter, the NRC staff's responses provided below could vary.

BACKGROUND:

By letter dated July 24, 2020 (ADAMS Accession No. ML20241A071), ACU submitted a regulatory engagement plan (REP) to the NRC. ACU's REP described, in part, ACU's plans to submit a construction permit (CP) application for an MSRR. The NRC staff held several public meetings with ACU regarding this matter.¹

ACU indicated that it has yet to select a site for its MSRR, and that it is considering multiple sites on or near the ACU campus in Abilene, Texas, including in the SERC that is planned for construction at ACU. ACU stated that it might begin construction of a multi-purpose building that would later house the MSRR, before a CP is issued, pursuant to 10 CFR 50.10(a)(2)(x).

By letter dated November 30, 2020, ACU submitted four questions to the NRC staff, which included a request to interpret 10 CFR 50.10. In its letter, ACU provided information supporting

¹ September 29, 2020 (ADAMS Accession No. ML20281A446); November 10, 2020 (ADAMS Accession No. ML20330A287); and December 10, 2020 (ADAMS Accession No. ML21011A094). Although not directly related to ACU's planned construction, the NRC staff also held a public meeting with ACU on November 19, 2020 (ADAMS Accession No. ML20330A282).

its determination that the MSRR would be the type of facility subject to 10 CFR 50.10(a)(2)(x) (i.e., “production or utilization facilities, other than testing facilities and nuclear power plants, required to be licensed under Section 104.a or Section 104.c of the Act”). ACU also submitted information regarding its SERC construction plans, including a discussion of its determination that the SERC is the type of building referred to in 10 CFR 50.10(a)(2)(x) (i.e., “buildings which will be used for activities other than operation of a facility and which may also be used to house a facility”), and that the erection of the SERC with potential space for a future MSRR would not require an NRC CP.

In reviewing ACU’s request, the NRC staff considered the following:

- The definitions of “utilization facility” and “testing facility” in 10 CFR Part 50, “Domestic Licensing of Production and Utilization Facilities”;
- The regulation 10 CFR 50.10, which, in part, describes activities that do and do not constitute “construction”;
- The regulation 10 CFR 50.21, “Class 104 licenses; for medical therapy and research and development facilities,” which describes types of facilities for which class 104 licenses will be issued;
- The regulation 10 CFR 50.22, “Class 103 licenses; for commercial and industrial facilities,” which describes types of facilities for which class 103 licenses will be issued;
- Subsection 104.c of Section 104, “Medical Therapy and Research and Development,” of the Atomic Energy Act of 1954, as amended (AEA), which authorizes the NRC to issue licenses for utilization and production facilities useful in the conduct of research and development; and
- The characteristics of ACU’s planned SERC and MSRR, as described in ACU’s letter dated November 30, 2020.

OVERVIEW OF 10 CFR 50.10:

Pursuant to 10 CFR 50.10, “License required; limited work authorization,” paragraph (c), “no person may begin the construction of a production or utilization facility on a site on which the facility is to be operated until that person has been issued either a construction permit..., an early site permit [that includes a limited work authorization]..., or a limited work authorization.” The current section 50.10(a) definition is divided into two parts: 10 CFR 50.10(a)(1) specifies activities deemed to constitute “construction,”² and 10 CFR 50.10(a)(2) specifies activities which are excluded from the definition, including 10 CFR 50.10(a)(2)(x).

Section 50.10(a) defines “construction” as the activities listed in 10 CFR 50.10(a)(1) (e.g., placement of concrete, installation of foundations, or assembly or erection that is for safety-related SSCs, SSCs relied upon to mitigate accidents or transients, and SSCs necessary to

² The NRC staff notes that a definition of “construction” is not provided in the AEA.

comply with Part 73), but not the activities listed in 10 CFR 50.10(a)(2). Section 50.10(a)(2)(x) states:

(2) Construction does not include:

[...]

(x) With respect to production or utilization facilities, other than testing facilities and nuclear power plants, required to be licensed under Section 104.a or Section 104.c of the Act, the erection of buildings which will be used for activities other than operation of a facility and which may also be used to house a facility (e.g., the construction of a college laboratory building with space for installation of a training reactor).

This exclusion from construction, although worded slightly differently, dates back to 1960.³ As explained in the final rule, “Limited Work Authorizations [LWAs] for Nuclear Power Plants,” published October 9, 2007 (72 FR 57416), which established the current definition of “construction” in 10 CFR 50.10(a), the “NRC’s interpretation of the scope of activities requiring a construction permit under the AEA [] remained largely unchanged” until 1972, when 10 CFR 50.10 was expanded based on the Atomic Energy Commission’s interpretation of its obligations under the National Environmental Policy Act of 1969, as amended (NEPA). However, the text of the multi-use or college laboratory building “construction” exclusion remained largely unchanged. As part of the 1972 rulemaking (37 FR 5745), a newly added 10 CFR 50.10(c) followed the 10 CFR 50.10(b) exclusions from the definition of “construction” requiring a CP. The new section 50.10(c) expanded the description of activities subject to a CP by defining “commencement of construction” as including activities that would adversely affect the natural environment of a site for “facilit[ies] subject to 10 CFR Part 50, Appendix D,” the interim statement of general policy and procedures implementing NEPA that applied to CP applicants for a power reactor, testing facility, or fuel reprocessing facility, or such other facility construction or operation that the Commission determined may have a significant impact on the environment.⁴

Minor revisions were made to the text of the 10 CFR 50.10(b)(4) exclusion for a college laboratory building. The previous version of the section 50.10(b)(4) exclusion was restated in 10 CFR 50.10(c)(3) as not constituting “commencement of construction.”

In 2007, however, the LWA final rule narrowed the definition of “construction” such that NRC authorization would be required only before undertaking activities that have a reasonable nexus to radiological health and safety (or the common defense and security).⁵ As pertinent here, the

³ The final rule promulgated on September 9, 1960 (25 FR 8712), defined “construction” that requires a CP in 10 CFR 50.10(b) and included an exclusion provision “[w]ith respect to production or utilization facilities, ...construction of buildings which will be used for activities other than operation of a facility and which may also be used to house a facility. (For example, the construction of a college laboratory building with space for installation of a training reactor...)”. It also stated the purpose of the original 10 CFR 50.10(b) was “clarification of work permitted or prohibited with respect to any production or utilization facility prior to the issuance of a construction permit.”

⁴ 37 FR 5745, 5748. See, e.g., 10 CFR Part 50, Appendix D, paragraph 4.A (1973).

⁵ 72 FR at 57417.

2007 rule also deleted the definition of “commencement of construction,” and listed activities that do and do not constitute “construction” in section 50.10(a), retaining the college laboratory building exclusion as section 50.10(a)(2)(x) with minor word changes.⁶

DISCUSSION:

NRC question 1. Does NRC agree with ACU’s interpretation that the proposed MSRR is the type of facility referred to in 10 CFR 50.10(a)(2)(x)? If not, why?

Yes. If ACU’s statements describing the MSRR are accurate and demonstrated in an application for a CP or operating license (OL), the planned MSRR could be considered as being among the type of facilities referred to in 10 CFR 50.10(a)(2)(x), that is, a “production or utilization facilit[y], other than testing facilities and nuclear power plants, required to be licensed under Section 104.a or Section 104.c of the [Atomic Energy Act of 1954, as amended].”

Title 10 CFR, Section 50.2, “Definitions,” defines “testing facility” and “utilization facility” as follows:

Testing facility means a nuclear reactor which is of a type described in [10 CFR 50.21(c)] and for which an application has been filed for a license authorizing operation at:

- (1) A thermal power level in excess of 10 megawatts; or
- (2) A thermal power level in excess of 1 megawatt, if the reactor is to contain:
 - (i) A circulating loop through the core in which the applicant proposes to conduct fuel experiments; or
 - (ii) A liquid fuel loading; or
 - (iii) An experimental facility in the core in excess of 16 square inches in cross-section.

[...]

Utilization facility means:

- (1) Any nuclear reactor other than one designed or used primarily for the formation of plutonium or U-233; or
- (2) An accelerator-driven subcritical operating assembly used for the irradiation of materials containing special nuclear material and described in the application assigned docket number 50-608.

⁶ The LWA rule (at 72 FR 57441-42) also made three changes, reflected in 10 CFR 50.10(a)(2)(x), from the text of the previous 10 CFR 50.10(b)(4) and 10 CFR 50.10(c)(3): Adding “nuclear power plants” as facilities that are not subject to 10 CFR 50.10(a)(2)(x); changing the wording “construction of buildings” to “erection of buildings” to describe the activity that is not considered construction; and removing “is not affected by this paragraph” from the parenthetical. The LWA rule also added the text of the 10 CFR 50.10(a) definitions of construction and non-construction in 10 CFR 51.4. See 72 FR 57443-44.

The regulation, 10 CFR 50.21(a), describes facilities which are required to be licensed under Section 104.a of the AEA. These types of facilities are utilization facilities for use in medical therapy.

The regulations in 10 CFR 50.21(b) and 10 CFR 50.22 describe the types of facilities which are required to be licensed under Sections 104.b and 103 of the AEA, respectively. These types of facilities are production and utilization facilities for industrial or commercial purposes, and certain facilities licensed prior to December 19, 1970. Pursuant to 10 CFR 50.22, a facility which is useful in the conduct of research and development activities of the types specified in Section 31 of the AEA is also “deemed to be for industrial or commercial purposes if the facility is to be used so that more than 50 percent of the annual cost of owning and operating the facility is devoted to the production of materials, products, or energy for sale or commercial distribution, or to the sale of services, other than research and development or education or training.”

The regulation, 10 CFR 50.21(c), describes the types of facilities which are required to be licensed under Section 104.c of the AEA as follows:

A class 104 license will be issued, to an applicant who qualifies, for any one or more of the following: to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, or use.

[...]

(c) A production or utilization facility, which is useful in the conduct of research and development activities of the types specified in section 31 of the Act, and which is not a facility of the type specified in paragraph (b) of this section or in [10 CFR] 50.22.

The Nuclear Energy Innovation and Modernization Act (NEIMA) amended Section 104.c of the AEA, in part, by adding an additional requirement for facilities licensed under Section 104.c, which is not yet reflected in the current 10 CFR 50.21(c). Specifically, NEIMA requires that licensees for facilities licensed under Section 104.c “shall recover not more than 75 percent of annual costs to the licensee of owning and operating the facility through sales of nonenergy services, energy, or both, other than research and development or education and training, of which not more than 50 percent may be through sales of energy.”

In its letter, ACU stated that the MSRR will meet the first definition of “utilization facility,” as a nuclear reactor other than one designed or used primarily for the formation of plutonium or uranium (U)-233, will not be a testing facility because it will have a liquid core loading and a licensed power level of 1 megawatt (MW) or less, and will not be a nuclear power plant. ACU further stated that the MSRR will not be licensed under Sections 103 or 104.b of the AEA as a commercial or industrial facility, but that it will be a facility which is useful in the conduct of research and development activities of the types specified in Section 31 of the AEA. ACU also stated that the MSRR will meet the additional cost recovery limitations imposed by NEIMA for facilities licensed under Section 104.c of the AEA. Therefore, ACU concludes that the MSRR will be licensed under Section 104.c of the AEA. ACU did not describe any use of the MSRR for medical therapy in its November 30, 2020, letter.

If, as ACU states, the planned MSRR is a “nuclear reactor other than one designed or used primarily for the formation of plutonium or U-233,” the planned MSRR could meet the 10 CFR 50.2 definition of “utilization facility.” Additionally, if, as ACU states, the MSRR will be a “nuclear

reactor other than one designed or used primarily for the formation of plutonium or U-233,” has “a liquid core loading with a licensed thermal power level of 1 megawatt or less,” and does not meet any of the other 10 CFR 50.2 testing facility criteria, the ACU planned MSRR would likely not be a “testing facility” under the current definition in 10 CFR 50.2.

Finally, ACU’s planned MSRR may be considered the type of nuclear reactor described in 10 CFR 50.21(c) and that could be licensed under Section 104.c of the AEA, if the planned MSRR will:

- (1) be a utilization facility which is useful in the conduct of research and development activities of the types specified in Section 31 of the AEA;
- (2) not be a facility that would be licensed for commercial or industrial purposes, including that it will not be used so that more than 50 percent of the annual cost of owning and operating the facility is devoted to the production of materials, products, or energy for sale or commercial distribution, or to the sale of services, other than research and development or education or training;
- (3) not be licensed prior to December 19, 1970;
- (4) be owned and operated such that the licensee recovers not more than 75 percent of annual costs to the licensee of owning and operating the facility through sales of nonenergy services, energy, or both, other than research and development or education and training, of which not more than 50 percent may be through sales of energy; and
- (5) not be used for medical therapy.

NRC question 2. Does NRC agree with ACU’s interpretation that the proposed SERC is the type of building referred to 10 CFR 50.10(a)(2)(x)? If not, why?

Yes. Based on the characteristics of the SERC building as described in ACU’s November 30, 2020 letter, and if the SERC “will be used for activities other than operation of a facility and which may also be used to house a facility (e.g., [...] a college laboratory building with space for installation of a training reactor),” the SERC could be the type of building referred to in 10 CFR 50.10(a)(2)(x).

ACU stated that the planned SERC will be a new building that will have a research bay, which could be used to house the MSRR, but indicated other sites, in addition to the SERC research bay, are also being considered for its MSRR. Additionally, ACU stated that the SERC will be a multipurpose building that, in addition to the research bay, will contain other laboratories to support teaching and research (including teaching and research related to molten salt reactor technology), offices, and classroom space.

ACU provided figures depicting, in part, the planned SERC building layout, including the research bay, but noted that the final SERC design could differ from that shown in the figures. The building layout shows the research bay, and SERC spaces that could be used for other purposes (e.g., research labs and offices). ACU stated that some SERC spaces outside the research bay, for the MSRR control room, reactor support equipment, and “a counting room to support research with [] material[,] would also be under the [NRC] reactor license.”

If, as ACU asserts, the SERC is: (1) a building which will be used for activities such as research, teaching, and/or office work that are not part of any reactor facility operation; and (2) a building which has space for installation of a reactor facility and may be used to house a reactor

facility, the planned SERC could be considered the type of building referred to in 10 CFR 50.10(a)(2)(x).

NRC question 3. Does NRC agree with ACU's interpretation that erection of the SERC with potential space for a future MSRR meets 10 CFR 50.10(a)(2)(x) and is not considered construction that requires the issuance of an NRC CP. If not, why?

Yes. If, as ACU indicates, the SERC were to be erected as a college laboratory building with an area identified as a research bay, which could serve as space for a "reactor, fuel storage and support equipment such as fission gas control, ventilation, and reactor heat transfer," then the erection of the SERC is the erection of a college laboratory building that "will be used for activities other than operation of a [research reactor] facility" and "which also may be used to house a [research reactor] facility," and thus meets the exception to the definition of construction stated in 10 CFR 50.10(a)(2)(x).

Therefore, based upon the above discussion in Questions 1 and 2, if ACU's planned MSRR is the type of facility referred to in 10 CFR 50.10(a)(2)(x), and the planned SERC would be a multi-use building, such as a collage lab building, referred to in 10 CFR 50.10(a)(2)(x), then the erection of the SERC would likely not be the type of activity that constitutes "construction," as described in 10 CFR 50.10(a), that would require the issuance of an NRC CP.

NRC question 4[a]. Will parts of the SERC research bay erected under 10 CFR 50.10(a)(2)(x) that are subsequently determined in whole or part to be MSRR SSCs be approved by the CP?

It is not appropriate to speculate about the results of the NRC's review of a potential, future CP application at this juncture. In general, however, the answer to this question depends on whether ACU submits a CP application that seeks approval of the final design of any SSCs and provides sufficient information for the NRC to conclude, prior to reviewing the final MSRR facility design submitted in an OL application, that SSCs will perform their intended functions.

ACU indicated that, while all MSRR SSCs have not been identified, its goal is to design a research bay that is suitable for an MSRR, and thus, SERC erection could include items that might later be identified as MSRR SSCs, but that are not easily back-fitted into the building later (e.g., the building structure, and support systems, such as electrical, water, ventilation, and security systems). ACU noted that it is reasonable to assume that the erection of the part of a building that would house a future research reactor would require construction of some features that would be reactor SSCs or part of SSCs, even if that construction were the minimum needed for a functioning building. ACU also indicated that, if it decides to submit a CP application for the MSRR, ACU would "identify and justify the preliminary design of SSCs specific to the proposed structure it would be located in," including the research bay if the MSRR were to be placed there. Its CP application would also explain if additional construction would be needed to complete an SSC. Additionally, ACU stated, "SERC construction records, to the extent available, would support the evaluation that those aspects of the SERC related to whole or partial SSCs meet the design requirements presented in the ACU CP safety analysis report."

The NRC staff anticipates that if ACU submits a CP application for an MSRR facility that is acceptable for docketing, the NRC would review the information provided by ACU, including information on items that ACU identifies as-built SSCs, if any, to determine whether the NRC can make the requisite findings to issue a CP. The NRC staff would also expect that, for any SSCs that are already erected or installed, in whole or part, ACU, at minimum, would retain and make available for inspection, any erection or installation records relevant to the CP (or a later

OL) application review, as appropriate. Such records could inform NRC determinations as to whether the these SSCs meet performance standards proposed in the CP application (or a subsequent OL application).

NRC regulations require a CP applicant to include a preliminary safety analysis report in its CP application. Under 10 CFR 50.35, "Issuance of construction permits," paragraph (b), a CP, if issued, does not constitute approval of the safety of any design feature or specification unless the applicant requests such approval and that approval is incorporated in the CP. Thus, if the research bay or any other portions of the MSRR facility SSCs were in the SERC erected under 10 CFR 50.10(a)(2)(x), the safety of those SSCs would not be approved by the issuance of a CP unless ACU specifically requests, and the NRC incorporates into the CP, approval of final design features or specifications. Under 10 CFR 50.35(b), a CP applicant may request approval of the safety of a design feature or specification in its CP application, or request approval, from time to time, by seeking amendment of a CP, if issued.⁷

However, ACU should not assume that the construction exclusion in 10 CFR 50.10(a)(2)(x) or the rulemaking history of section 10 CFR 50.10 authorize ACU to build all of the reactor facility SSCs under the construction exclusion, or that an NRC review of a CP application or a subsequent OL application will find all facility SSCs completed during SERC erection to be acceptable. While it is reasonable for ACU to conclude that only minor changes have been made to the text of the exclusion, the 2007 revisions limited the scope of the 10 CFR 50.10 definition of construction to activities related to SSCs that have a reasonable nexus to radiological health and safety or common defense and security. As a result, ACU should be aware that the NRC will evaluate MSRR facility SSCs that are within the scope of 50.10, and any other SSCs that ACU identifies, in a CP application or OL application. Determinations regarding the acceptability of any SSCs would await ACU's submission of the requisite information needed for the NRC to complete a CP or OL application review.

NRC question 4[b]. If the CP application contains an evaluation that concludes these SSCs are acceptable or need addition[al] construction, and NRC reviews and agrees, can they remain in place as erected upon granting the CP?

It depends. While it is not appropriate to speculate about the results of an NRC review of an application that has not been submitted, in general, facility SSCs could be eligible to remain in place following issuance of a CP.

If ACU submits a CP application, which seeks approval of the final design of as-built SSCs (or partial SSCs) and contains sufficient information for the NRC to approve those facility SSCs without requiring, for example, any replacement, re-erection, or re-installation, without the need to review the final MSRR facility design submitted in an OL application, and if such approval is incorporated in a CP, then the as-built SSCs could be eligible to remain in place following CP issuance.

Whether or not the CP application requests a final design approval of any SSCs, the CP application would need to provide sufficient information on the design of the facility SSCs

⁷ The "NOTE" at the end of 10 CFR 50.35(a) states, "When an applicant has supplied initially all of the technical information required to complete the application, including the final design of the facility, the findings required above will be appropriately modified."

(including as-built SSCs) and the ability of the SSCs to meet performance standards proposed in the CP application, such that the NRC can make the requisite findings to issue to a CP. If ACU provides sufficient information for the NRC to issue a CP, but does not request final design approval of any SSCs in the CP application (or a CP amendment request), then in general, SSCs would not be prohibited from remaining in place following CP issuance, but a decision on whether the SSCs could continue to remain in place following issuance of an OL would await the completion of the OL review.

Whether or not the NRC approves a final SSC design in a CP application, it is possible that an MSRR facility SSC (or multiple SSCs) might later need modification or removal (1) due to ACU facility design changes during reactor facility construction or in the OL application or (2) based on an NRC determination of whether an OL can be issued with as-built SSCs.

NRC question 4[c]. Or will they be required to be removed and reinstalled after a CP is issued?

While an SSC would not need to be removed and re-installed solely because it had been installed (as part of the SERC construction) prior to CP issuance, an SSC could potentially need to be modified or removed and re-installed, following issuance of the CP, for other reasons. For example, as-built SSCs could need to be modified, removed, replaced, or re-installed if the final MSRR facility design evolves during construction (and in the OL application), if there is insufficient documentation of the construction or installation of any pre-existing building features that later become SSCs, or if additional requirements must be imposed based on an NRC review of the final MSRR facility design in an OL application.⁸ Even if a CP or CP amendment were to approve the final design of certain SSCs, if ACU cannot demonstrate that as-built SSCs can perform their intended function to meet NRC requirements, a license could be denied. Thus, ACU would proceed at its own risk if it completes any SSCs before NRC approval of a final design in an OL.

CONCLUSION

In summary, as discussed in responses to Questions 1 and 2 above, based on ACU's November 30, 2020, letter, the planned SERC and MSRR could be considered the type of building and facility, respectively, referred to in 10 CFR 50.10(a)(2)(x). In addition, as discussed in the response to Question 3, the erection of the SERC could meet the 10 CFR 50.10(a)(2)(x) exclusion from the definition of "construction."

As stated in response to Questions 4[a], [b], and [c] above, the answers to whether as-built SSCs will be approved by the issuance of a CP and whether they can remain without modification or removal after a CP is issued will hinge upon several factors and it is not appropriate to speculate about the results of the NRC's review at this juncture. For example, the approval of as-built SSCs in a CP would depend upon whether an ACU CP application seeks final design approval of as-built MSRR facility SSCs. In addition, ACU would need to provide sufficient information for the NRC to approve the final design of the as-built SSCs

⁸ A generic evaluation of research reactors and critical facilities designed to operate a 2 MW thermal or lower, "Environmental Considerations Regarding the Licensing of Research Reactors and Critical Facilities," notes that reactors are most frequently sited on university campuses, housed in existing structures, appropriately modified, or placed in new buildings. See Kansas State University; TRIGA Mark II Nuclear Research Reactor; Environmental Assessment and Finding of No Significant Impact (66 FR 16696, 16697, March 27, 2001).

(without needing to consider the final MSRR design information that must be submitted in an OL application) and to make the requisite findings to issue a CP. SSCs would not need to be removed and re-installed solely because they had been installed prior to CP issuance. However, even if a CP incorporating approval of as-built SSCs were issued, a determination of whether such SSCs could remain without modification or removal after a CP were issued could depend, for example, on the evolution of the final MSRR facility design during construction and whether ACU provides sufficient information in an OL application for the NRC to find that as-built SSCs will perform their intended functions and their final design meets NRC requirements for the issuance of an OL.

Finally, as noted above, the 10 CFR 50.10(a)(2)(x) construction exclusion does not constitute tacit NRC approval of any reactor facility SSCs that ACU plans to erect or install during the erection of the SERC or indicate that the NRC will find acceptable any as-built SSCs that ACU subsequently identifies in a CP or OL application. These determinations would await the completion of any NRC licensing reviews. If ACU completes SSCs without NRC approval of a final MSRR facility design, ACU would proceed at its own risk.