



UNITED STATES
NUCLEAR REGULATORY COMMISSION
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April 20, 2021

MEMORANDUM TO: File

FROM: Michael L. Marshall, Jr., Senior Project Manager /RA/
Plant Licensing Branch I
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

SUBJECT: DOCUMENTATION OF DECISION BY NRC STAFF THAT EPRI
REPORT 3002012988 MEETS THE CRITERIA FOR A FEDERAL
RECORD (EPID L-2018-LLA-0482, L-2019-LLA-0269, AND
L-2019-LLA-0290)

BACKGROUND

By letters dated November 28, 2018, December 6, 2019, and December 26, 2019, the licensees for Calvert Cliffs Nuclear Power Plant, Units 1 and 2 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML18333A022), Surry Power Station, Units 1 and 2 (ADAMS Accession No. ML19343A019), and Nine Mile Point Nuclear Station, Unit 2 (ADAMS Accession No. ML19360A145), respectively, submitted license amendment requests to use a risk-informed process for the categorization and treatment of structures, systems, and components for nuclear power reactors under Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.69. Each of the license amendment requests included an alternative approach for the treatment of seismic risk in the proposed categorization program. The alternative seismic approach is supported by the insights documented in Electric Power Research Institute (EPRI) Report 3002012988, "Alternative Approaches for Addressing Seismic Risk in 10 CFR 50.69 Risk-Informed Categorization," which was freely available to the general public at the time each of the requests were submitted to the NRC. In each of the license amendment requests, the report was referenced. Neither the licensees nor EPRI submitted a copy of EPRI Report 3002012988 to the NRC.

The report was freely and publicly available from a Web site maintained by EPRI for download. The NRC staff downloaded copies of the report to use in the NRC staff's review of each of the license amendment requests. After the NRC staff completed one review and prior to the NRC staff completing the other two reviews identified above, the NRC staff learned that the report was no longer freely and publicly available from EPRI's Web site. The change in availability of the report from the EPRI's Web site prompted the cognizant staff to question whether the report should be retained as an official agency record (i.e., Federal record).

DECISION

The NRC issued amendments approving the licensees' requests on February 28, 2020, for Calvert Cliffs Nuclear Power Plant, Units and 2 (ADAMS Accession No. ML19330D909), on

December 8, 2020, for Surry Power Station, Units 1 and 2 (ADAMS Accession No. ML20293A160), and on January 29 2021, for Nine Mile Point Nuclear Station, Unit 2 (ADAMS Accession No. ML20332A115). As documented in each of the NRC staff's safety evaluations, the information in EPRI Report 3002012988 was used in the NRC staff's decision-making for each of the amendment requests. The information in the report was essential to the licensee's requests and the NRC staff's decision-making.

According to the amended version of Title 44 of the United States Code, Subsection 3301, Definition of Records, records are defined as:

[...] all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them.

In plain language, a record is documentation that provides accurate information and evidence of the NRC's functions, policies, and decision-making processes. Because information in EPRI Report 3002012988 was used in making multiple licensing decisions, it meets the criteria of a Federal record. The NRC is required to preserve information (e.g., reports) used in the NRC staff's decision-making on amending the license and technical specifications of operating power reactors, which is public business.

EPRI Report 3002012988 is copyrighted-protected. Downloading a copy of a report that is referenced in a requested licensing action is not the usual route by which the NRC receives copyright-protected information. Usually the NRC receive such information directly from the copyright holder, in which case the terms of the relevant license agreement dictate what we can and cannot do with it; or from a third-party (e.g., licensee) who submits it directly to the NRC, in which case 10 CFR 2.390 dictates what steps the submitter must take in order to request non-public treatment. Because of the unusual route used by the NRC staff obtained a copy of EPRI Report 3002012988, the copyrighted report should not be made publicly available without EPRI's permission.

Because the NRC staff acquired the report (at a time when it was freely available to the public) and its informational value with respect to the NRC's decisionmaking process in issuing these license amendments, the NRC staff placed a downloaded copy of EPRI Report 3002012988 into non-public ADAMS to preserve the information that was used in the NRC staff's licensing decisions.

Docket Nos. 50-280, 50-281, 50-317, 50-318, and 50-410

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ADAMS Accession No.

ML21067A141 (Package);

ML21067A092 (Memo);

ML21067A143 (EPRI Report)

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