

October 27, 2022

Brooke P. Clark
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Mail Stop O-16B33
Washington, DC 20555-0001

TO: Chairman Christopher T. Hanson
Commissioner Jeff Baran
Commissioner David A. Wright
Commissioner Annie Caputo
Commissioner Bradley R. Crowell

SUBJECT: Clarification of the Scope of a Limited Work Authorization (LWA)

REFERENCES: Docket ID NRC-2009-0196, Alignment of Licensing Processes and Lessons Learned from New Reactor Licensing

Dear Chairman and Commissioners:

The purpose of this letter is to ask the Commission, in its forthcoming rulemaking, to seek public comments on the scope of limited work authorizations (LWA). Specifically, NuScale is asking the Commission to seek comments in the proposed rulemaking whether the definition of construction with respect to LWAs should be limited to those activities and structures that have a clear nexus to nuclear safety or would not otherwise be evaluated for safety in subsequent licensing proceedings.

Reactor “construction” requires either a construction permit under Part 50 or a combined license under Part 52. However, NRC regulations, at 10 CFR 50.10(a)(2), do allow for some activities that are deemed “not construction.”

Carbon Free Power Project (CFPP) plans are to excavate for the reactor building and radwaste building in advance of receiving a combined license. Excavation is expressly listed as “not construction” under 50.10(a)(2)(v).

Due to the depth of the excavation and site conditions, CFPP will install supports within the excavation. The supports will be “tie backs”—lateral anchors in the excavation wall—and a thin, non-structural, sprayed-concrete excavation lining to stabilize the exposed rock walls. They will be constructed for worker safety, not for any nuclear safety or security purpose. The supports serve no purpose after construction. CFPP intends to abandon the supports in place because removal could endanger workers. The excavation would then be filled in around the reactor building.

NuScale’s preliminary analyses show that leaving the supports in place has no meaningful effect on nuclear safety and, in any case, the effect of abandoning supports would be considered in the design of the reactor building itself and evaluated as necessary to demonstrate acceptability. The NRC will review the effects during a subsequent licensing

process, *i.e.*, the combined license application.¹ Due to the depth of excavation, NuScale expects these conditions to exist at most sites. It is possible that other vendors, who may also plan deep embedments for the associated safety benefits, may also need similar worker safety measures for their excavations.

The Staff's interpretation,² on the basis of statements in the LWA rule,³ is that because the supports will be abandoned in place, the supports are "permanent." Because they are "permanent," the abandoned supports are "construction" requiring NRC approval.

During NuScale's engagement with the Staff, the Staff suggested an exemption for the tiebacks as a more efficient method than an LWA. NuScale agrees that for CFPP this is a more efficient regulatory process that best meets the CFPP construction schedule, and is appropriate given the absence of safety significance with the tiebacks.

The exemption approach is a good solution for CFPP given agency action will be needed soon, with the exemption submitted mid-2023. As a long-term solution, reliance on exemptions is not optimal: 1) the tiebacks lack a nexus to safety; 2) tiebacks or equivalent worker safety measures will likely be necessary for all NuScale sites; 3) other vendors that plan commercial operation within the next decade may have a similar need; and 4) as a practice, the NRC has preferred regulation over numerous exemptions.

NuScale considered proposing clarification to the definition of construction in the LWA rule during the public comment period on the proposed rulemaking currently under review by the Commission. On the basis of discussions with the Staff, this approach risks renouncing the proposed rule. Completion of this rulemaking is important, and thus this option is unattractive.

A second approach would be to include clarification of construction into the proposed rule. This option would take time to implement as stakeholder input may be desired before modifying the proposed rule. This approach would delay publication of the proposed rule, making this option unattractive.

The recommended approach is for the rulemaking to be modified so that the Commission requests public comment on whether the definition of construction needs clarification. Under this approach, changes to that definition would be within the substance of the rulemaking and thus would avoid the need to renounce. This approach appears to be the most efficient process, with the least risk to the rulemaking schedule, and thus preferred.

Sincerely,



Tom Bergman
Vice President, Regulatory Affairs
NuScale Power, LLC

¹ See T.A. Bergman/CFPP, Letter to U.S.NRC at page 4 (ML22214A172) (Aug. 2, 2022); this method reserves for NRC review activities truly having a nexus to nuclear safety, such as the construction of the reactor building.

² See Robert M. Taylor, U.S.NRC, "U.S. Nuclear Regulatory Commission Response to Request to Clarify Whether Installation of Excavation Supports is a Pre Construction Activity," (ML22222A012) (Sept. 14, 2022)

³ See *id.* at page 2 *citing* U.S. NRC, Final Rule, "Limited Work Authorizations for Nuclear Power Plants," 72 Fed.Reg 57146, 57147 (Oct. 9, 2007) (statements of consideration)

From: [Bergman, Tom](#)
To: [Docket, Hearing](#); [Brooke Clark](#); [Robert Taylor](#)
Cc: [Fosaaen, Carrie](#)
Subject: [External_Sender] Letter to Commission Regarding LWA definition of Construction
Date: Thursday, October 27, 2022 3:31:36 PM
Attachments: [image001.png](#)
[LO-129279 LWA rule change request.pdf](#)

Rob & Brooke,

Not exactly sure how to submit this letter where the addressees are the Commission. We have also submitted to the DCD as an electronic submission. I thought I would send to you as well so that it might get to the Commission more quickly, since they are deliberating on this rule now.

Greatly appreciated,



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