

Precedent and Policy History Applicable to Reinstatement of Terminated Combined Licenses

In 2018, the U.S. Nuclear Regulatory Commission (NRC) staff considered the portions of the Commission Policy Statement on Deferred Plants (52 FR 38077; October 14, 1987) (1987 Policy Statement) that could be applied to combined licenses (COLs) to develop the “Current NRC Staff Views on Applying the Deferred Plant Policy Statement to Part 52 Plants” (Agencywide Documents Access and Management System (ADAMS) Accession No. ML18065B257) (Staff Views on Deferred Part 52 Plants).

For a terminated COL issued under 10 *Code of Federal Regulations* (10 CFR) Part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants,” as opposed to one placed in terminated status under the 1987 Policy Statement, which pertained to plants licensed under 10 CFR Part 50, the NRC may reactivate the license in accordance with the Commission’s decision on the Bellefonte Units 1 and 2 licenses, provided the conditions specified in that decision are met. (The distinction is between termination *of construction* under the 1987 Policy Statement, as opposed to termination *of the license*.) See 71 NRC 113, “Tennessee Valley Authority (Bellefonte Nuclear Plant, Units 1 and 2)” (ML13056A621). The *Bellefonte* decision rested, in part, on the Commission’s determination that the Bellefonte construction permits (CPs) had not expired and, therefore, the licensee had not “forfeited” any rights under Section 185a. of the Atomic Energy Act of 1954, as amended (AEA). *Id.* at 121. Accordingly, the Commission determined that the NRC has authority to reinstate voluntarily surrendered CPs. *Bellefonte*, CLI-10-6, 71 NRC at 115, 120-26.

Before the NRC makes a finding under 10 CFR 52.103(g), a COL authorizes the same activities as a CP, and 10 CFR 52.110 does not apply. (See Staff Views on Deferred Part 52 Plants.) Accordingly, a voluntarily surrendered COL is equivalent to a voluntarily surrendered CP, and the staff intends to follow a path to reactivating COLs under which no construction activities have been performed similar to that enunciated in *Bellefonte* for CPs.¹ As described in *Bellefonte*, the Commission had previously authorized the NRC staff to issue an order reinstating the Bellefonte CPs, based in part on the following two staff actions:

- 1) Pursuant to Commission direction, the NRC staff offered a hearing opportunity on the question of whether TVA had established “good cause” for reinstatement (*Bellefonte*, CLI-10-6 at 118); and
- 2) The staff prepared an environmental assessment that concluded that reinstatement would not result in a significant environmental impact (*id.*).

In addition, in accordance with the 1987 Policy Statement for CPs in terminated status, the staff evaluated whether the available documentation was substantially in accordance with Section III.A.3 of that Policy Statement. Section III.A.3 of the 1987 Policy Statement called for the “retention and protection of records” (52 FR 38077; October 14, 1987). While the 1987

¹ Because a COL, unlike a CP, does not include the latest date for completion of construction, nor does it include an expiration date until the NRC finds that the ITAAC are met under 10 CFR 50.103(g), a COL may be held for an indefinite period or reactivated at any time. See Staff Views on Deferred Part 52 Plants. The staff notes that under this approach, a licensee or the NRC could reactivate a COL at any time and no current approach exists for permanently ending license obligations. See *generally*, “Timeliness in Decommissioning of Materials Facilities,” Final Rule, 59 FR 36026, 35028 (July 15, 1994) (defining license “expiration” and “termination” in plain English). Though beyond the scope of this paper, should a licensee seek to permanently end all obligations under a COL in circumstances in which a reactor has not operated, one option might be for the Commission to issue an order declaring such a COL null and void as of the date of the order.

Policy Statement did not explicitly state the documentation needed for reinstatement of a CP for which construction had been terminated, the criteria for documentation were the same as for a deferred plant, i.e., a description of the quality assurance program during the deferral including a description of the planned activities; organization responsibilities and procedural controls that apply to construction status, maintenance, and preservation of equipment and materials; and retention and protections of quality assurance records (52 FR 38077; October 14, 1987).

In the context of a COL for a site at which the licensee has not initiated construction, the criteria in the 1987 Policy Statement would apply as follows. As indicated in the 1987 Policy Statement, licensee activities would include the preservation and documentation of licensing basis documents associated with the COL. Because a licensee did not construct or install structures, systems, and components at such a site, documentation of construction status, maintenance, and preservation of equipment and materials would not exist. The licensee for such a site would nonetheless need to develop documentation to reestablish the quality assurance program and all other programs and the organizations needed to construct the plant.

As shown in Enclosure 1, there are a limited number of COLs where the licensee did not initiate construction and for which the COL holder requested termination — namely, Levy Nuclear Plant, Units 1 and 2, and South Texas Project, Units 3 and 4. This enclosure presents the NRC staff's evaluation of the precedent and policy history applicable to reinstatement and does not reflect any known or stated intent by the entities identified.²

² The staff's planned approach could have the effect of significantly expanding the reach of the Bellefonte decision, which was evidently not the Commission's original goal. As the Commission's decision stated, "our decision today is confined to the unusual facts of this case, involving a previously-withdrawn but not-yet-expired construction permit. As such, our reinstatement authority could be invoked again, if ever, only in the rarest of circumstances." *Bellefonte*, CLI-10-6, 71 NRC at 124. In its decision, the Commission evidently did not consider the potentially more common circumstance of an unexpired COL.