

**ORAL ARGUMENT NOT YET SCHEDULED**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

D.C. Cir. No. 12-1106 (Consolidated with D.C. Cir. No. 12-1151)

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BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE, *et al.*,  
Petitioners,

v.

UNITED STATES NUCLEAR REGULATORY COMMISSION and the UNITED  
STATES OF AMERICA,  
Respondents

SOUTHERN NUCLEAR OPERATING CO., *et al.*,  
Intervenors.

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Petition for Review of Final Administrative Action of the  
United States Nuclear Regulatory Commission

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**CORRECTED FINAL OPENING BRIEF FOR PETITIONERS**

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## **CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES**

Pursuant to D.C. Circuit Rules 15(c)(3) and 28(a)(1), counsel for Petitioners certify as follows:

### **I. Parties, Intervenors, and *Amici Curiae*.**

Petitioners are Blue Ridge Environmental Defense League, Inc. on behalf of its members; Citizens Allied for Safe Energy, Inc. on behalf of its members; Center for a Sustainable Coast, Inc. on behalf of its members; Friends of the Earth, Inc. on behalf of its members; Georgia Women's Action for New Directions, Inc. on behalf of its members; North Carolina Waste Awareness and Reduction Network, Inc. on behalf of its members; Nuclear Information and Resource Service, Inc. on behalf of its members; Nuclear Watch South, Inc. on behalf of its members; and Southern Alliance for Clean Energy, Inc. on behalf of its members.

Respondents are the Nuclear Regulatory Commission (“NRC”) and the United States of America.

Intervenor-Respondents are Southern Nuclear Operating Company; Westinghouse Electric Company, L.L.C.; and the City of Dalton, Georgia. Petitioners are aware of no *amici* in this proceeding.

### **II. Rulings Under Review**

Petitioners seek review of the following NRC orders and rule, as set forth below:

**A. Orders Related to Licensing of Vogtle Reactors Units 3 and 4**

- *Luminant Generation Company, L.L.C., et al.*, LBP-11-36, 74 NRC \_\_ (Nov. 30, 2011) (J.A. 226);
- *Southern Nuclear Operating Co.*, CLI-12-02, 75 NRC \_\_ (Feb. 9, 2012) (J.A. 95);
- Combined License No. NPF-91, Vogtle Electric Generating Plant Unit 3 (Feb. 16, 2012) (J.A. 35);
- Limited Work Authorization, Vogtle Electric Generating Plant Unit 3 (Feb. 10, 2012) (J.A. 71);
- Combined License No. NPF-92, Vogtle Electric Generating Plant Unit 4 (Feb. 10, 2012) (J.A. 53);
- Limited Work Authorization, Vogtle Electric Generating Plant Unit 4 (Feb. 10, 2012) (J.A. 83);
- Vogtle Electric Generating Plant, Units 3 and 4; Issuance of Combined Licenses and Limited Work Authorizations and Record of Decision, 77 Fed. Reg. 12,332 (Feb. 29, 2012) (J.A.34);
- *Luminant Generation Co., et al.*, Memorandum and Order, CLI-12-07, 75 NRC \_\_ (Mar. 16, 2012) (J.A.19).

## **B. AP1000 Rule**

- Final Rule, AP1000 Design Certification Amendment,” 76 Fed. Reg. 82,079 (Dec. 30, 2011) (J.A. 193).

## **III. Related Cases**

The current proceeding consists of two consolidated cases: *Blue Ridge Environmental Defense League, et al. v. NRC*, No. 12-1106 and *Blue Ridge Environmental Defense League, et al. v. NRC*, No. 12-1151. In No. 12-1106, Petitioners challenge the NRC’s failure to comply with NEPA in certifying the AP1000 design. In No. 12-1511, Petitioners challenge the NRC’s failure to comply with the National Environmental Policy Act (“NEPA”) in licensing two new nuclear reactors intended to be built to the AP1000 design.

Respectfully submitted,

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August 6, 2012

## **PETITIONERS' RULE 26.1 DISCLOSURE STATEMENT**

Pursuant to Fed. R. App. P. 26.1 and D.C. Cir. Rule 26.1, Petitioners Blue Ridge Environmental Defense League, Inc.; Citizens Allied for Safe Energy, Inc.; Center for a Sustainable Coast, Inc.; Friends of the Earth, Inc.; Georgia Women's Action for New Directions, Inc.; North Carolina Waste Awareness and Reduction Network, Inc.; Nuclear Information and Resource Service, Inc.; Nuclear Watch South, Inc.; and Southern Alliance for Clean Energy, Inc. state that they are nonprofit corporations whose general nature and purpose is environmental advocacy. None of Petitioners has parent companies, no publicly-traded company has a 10% or greater ownership interest in any of them, and none of them are traded for profit.

Respectfully submitted,

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***Principal authorities denoted by an asterisk.***

## **GLOSSARY**

Pursuant to Circuit Rule 28(a)(3), the following is a glossary of acronyms and abbreviations used in this brief:

AEA	Atomic Energy Act
APA	Administrative Procedure Act
ASLB	Atomic Safety and Licensing Board
COL	Combined License
DCR	Design Certification Rule
EA	Environmental Assessment
EIS	Environmental Impact Statement
FONSI	Finding of No Significant Impact
NEPA	National Environmental Policy Act
NRC	Nuclear Regulatory Commission
SAMDA	Severe Accident Mitigation Design Alternative
SEIS	Supplemental Environmental Impact Statement
Southern Co.	Southern Nuclear Operating Company
Westinghouse	Westinghouse Electric Company, LLC



## **STATEMENT OF JURISDICTION**

This case concerns the review of orders and regulations issued by the U.S. Nuclear Regulatory Commission. They are reviewable by this Court under 42 U.S.C. § 2239(b), 28 U.S.C. § 2342(4), and 5 U.S.C. § 702. The appeals were timely filed pursuant to 28 U.S.C. § 2344 because they were docketed within sixty days of the issuance of the orders and regulations on appeal.

## **STATUTES AND REGULATIONS**

Relevant statutes and regulations are included in an addendum.

## **ISSUES PRESENTED FOR REVIEW**

1. In light of the U.S. Nuclear Regulatory Commission's ("NRC's") complete adoption of the recommendations for regulatory reform issued by its own Fukushima Task Force, did the NRC violate the National Environmental Policy Act's ("NEPA's") requirement to consider new and significant information bearing on the outcome of its environmental analysis for the issuance of Combined Licenses ("COLs") for Vogtle Electric Generating Plant Units 3 and 4 ("Vogtle 3 & 4") by failing to supplement the Final Supplemental Environmental Impact Statement ("SEIS") for Vogtle 3 & 4 and the Environmental Assessment ("EA") for the underlying AP1000 design to address the environmental implications of the Task Force's recommendations?

2. Did the NRC violate NEPA's public participation requirements by making a merits determination on Petitioners' request for supplementation of the SEIS for Vogtle 3 & 4 in a hearing from which it excluded Petitioners?

3. Did the NRC violate the hearing requirement of the Atomic Energy Act ("AEA") by refusing Petitioners' request for a hearing on the question of whether it must supplement the SEIS?

### **INTRODUCTION**

This case concerns the U.S. Nuclear Regulatory Commission's ("NRC's") legally inadequate regulatory response to the catastrophic nuclear power plant accident at the six-reactor Fukushima Dai-ichi complex on the coast of Japan. Shortly after the accident began, the Commission appointed a high-level Task Force to investigate the relevance of the Fukushima accident to U.S. reactors and NRC regulations. At the conclusion of the investigation, the Commission adopted all of the Task Force's recommendations to make significant changes to its regulatory program in three major areas – risk analysis for earthquakes and floods, equipment upgrades to protect reactor core and spent fuel cooling systems during extended power outages and multi-unit accidents, and emergency planning upgrades for extended power outages and multi-unit accidents. The Commission also adopted the Task Force recommendation to review its entire regulatory scheme and implement a risk-informed, defense-in-depth regulatory framework.

At the time that it adopted the Task Force recommendations, the Commission had before it both Southern Nuclear Operating Company's ("Southern Co.'s") application for COLs for Vogtle 3 & 4 and Westinghouse Electric Company's ("Westinghouse's") application for amended certification of the underlying standardized AP1000 design on which the Vogtle 3 & 4 application relied. Yet, the NRC took no steps to ensure that the Task Force recommendations would be implemented in the safety requirements for Vogtle 3 & 4 or the AP1000 design before the COLs were issued for the new reactors in February 2012 or the design was certified in late 2011. In the words of dissenting NRC Chairman Jaczko, "I cannot support issuing [the Vogtle 3 & 4] licenses as if Fukushima never happened." J.A. 256, 259-260.

Petitioners submit that under the National Environmental Policy Act, the Commission was precluded as a matter of law from issuing the Vogtle 3 & 4 COLs or certifying the amended AP1000 "as if Fukushima never happened." The Commission's very adoption of all of the Fukushima Task Force recommendations and its commitment to implement them in its regulatory program for basic protection of public health and safety established beyond any legal dispute that the Commission considered the Task Force recommendations to constitute "new and significant information" that could have a bearing on the outcome of its environmental analysis for Vogtle 3 & 4. Therefore, in order to satisfy NEPA's

cardinal requirement to consider environmental issues *before* taking action that could harm the environment, *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989), the NRC was required to supplement the Vogtle 3 & 4 SEIS before issuance of the COLs. In addition, because the Environmental Assessment (“EA”) for the underlying AP1000 design contains crucial information regarding Severe Accident Mitigation Design Alternatives (“SAMDAs”) applicable to Vogtle 3 & 4, the NRC was also required to supplement the AP1000 EA before certifying the design.

At the very least, the NRC was required by Section 189a of the Atomic Energy Act, 42 U.S.C. § 2239(a)(1), to grant Petitioners a hearing on the question of whether the SEIS for Vogtle 3 & 4 should be supplemented to address the environmental implications of the Task Force recommendations. The NRC’s primary rationale for denying the hearing – that consideration of Petitioners’ claim was “premature” (J.A. 19, 27-28) – is fundamentally contradicted by the NRC’s decisions to (a) adopt the Task Force recommendations and (b) exclude Petitioners from a hearing that actually discussed whether supplementation of the SEIS was warranted.

Accordingly, Petitioners request the Court to vacate the NRC’s decisions approving the issuance of COLs for Vogtle 3 & 4 and the underlying AP1000 Rule

and order that those approvals may not be granted until the NRC has conducted further proceedings consistent with NEPA.

## **STATUTORY AND REGULATORY FRAMEWORK**

The NRC's regulation and licensing of reactors is governed by two statutes: the AEA, 42 U.S.C. § 2011, et seq., and NEPA, 42 U.S.C. §§ 4321-4370h. While these are separate statutes that impose independent obligations, *see Limerick Ecology Action v. NRC*, 869 F.2d 719, 729-31 (3rd Cir. 1989), their concerns overlap. *Citizens for Safe Power v. NRC*, 524 F.2d 1291, 1299 (D.C. Cir. 1975).

### **I. AEA STANDARDS AND PROCEDURES FOR NEW REACTOR LICENSING**

#### **A. Standards and Procedures for Review of COL Applications**

The AEA permits the NRC to issue combined licenses (*i.e.*, "COLs") for both the construction and operation of new reactors, provided the application meets the safety requirements of the AEA, NRC safety regulations, and the license itself. 42 U.S.C. § 2235(b). *See also* 10 C.F.R. § 52.97. NRC regulations also require the preparation of a full environmental impact statement before a COL may issue. 10 C.F.R. § 51.75(c).

COL applicants may rely on and incorporate by reference standardized designs that have been certified by the Commission. *See also* 10 C.F.R. § 52.79(d)(1). The design is treated as a final decision that may not be challenged in any hearing on the adequacy of the COL application. 10 C.F.R. § 52.63(a)(5).

Up to 20 years prior to the submission of a COL application, the applicant also may request approval of a new reactor site in an Early Site Permit (“ESP”). 10 C.F.R. Part 52 Subpart A, 10 C.F.R. § 52.26. If application is made for an ESP, the NRC must prepare an EIS that will be supplemented at the COL stage. 10 C.F.R. § 51.75(c)(1).

## **B. Standards and Procedures for Certification of Standardized Designs**

The NRC uses formal notice-and-comment rulemaking to certify standardized designs. 10 C.F.R. §§ 52.51, 52.54. A certified design application will be approved if it satisfies NRC safety standards and the NRC has made necessary environmental findings under NEPA. 10 C.F.R. § 52.54.

Reasoning that the certification of a design, by itself, has no environmental impacts, the NRC prepares only an EA for design certification. Final Rule, Licenses, Certifications, and Approvals for Nuclear Power Plants, 72 Fed. Reg. 49,352, 49,426 (Aug. 28, 2007). The EA is published for comment in the same notice as the proposed standardized design rule. 10 C.F.R. § 51.31(b)(1).

The EA for a design certification rule addresses only one topic: the relative costs and benefits of Severe Accident Mitigation Design Alternatives. 10 C.F.R. § 51.30(d). While SAMDAs ordinarily are addressed in EISs for individual reactors, *see* 10 C.F.R. § 51.71(d), the NRC addresses SAMDAs in EAs for reactor design certification on the grounds that SAMDAs are more related to the design of

a new reactor than its site-specific features. 72 Fed. Reg. at 49,426. The SAMDA findings in an EA for a standardized design may be incorporated by reference into an EIS for an individual COL application if the applicant can show that the characteristics of the proposed COL site fall within the parameters addressed in the EA. 10 C.F.R. § 51.75(c)(2).

Because the EA is issued as part of the standardized design certification rule, the EA's findings are treated as final decisions that may not be challenged in any hearing on the adequacy of an EIS for an individual COL application. 10 C.F.R. § 52.63(a)(5). *See, e.g.*, Final Rule, AP1000 Design Certification Amendment, 76 Fed. Reg. 82,079, 82,102-03 (Dec. 30, 2011) (treating as resolved “[a]ll environmental issues concerning severe accident mitigation design alternatives associated with the information in the NRC’s EA for the AP1000 design . . .”)

## **C. AEA Hearing Requirement**

### **1. Contested hearings**

Section 189a of the AEA requires the NRC to provide interested members of the public with a prior opportunity for a hearing on any proposed licensing action. 42 U.S.C. § 2239(a)(1)(A). NRC regulations permit the use of Section 189a hearings to challenge the NRC’s failure to comply with NEPA in its licensing decisions. 10 C.F.R. § 51.104. Throughout the hearing, the applicant bears the burden of proof. 10 C.F.R. § 2.325.

A petitioner for a hearing must file “contentions” that explain and document the concerns the petitioner seeks to litigate. 10 C.F.R. § 2.309(f)(1). Contentions must be supported by “sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.” *Id.* The scope of the hearing is restricted to the contentions that have been admitted by the Atomic Safety and Licensing Board (“ASLB”) panel that is assigned to hear the case.

## **2. Mandatory hearings on uncontested issues**

In any proceeding for the issuance of a COL, the AEA also requires the NRC to conduct a “mandatory” or “uncontested” hearing on all issues not put into controversy by other parties. 42 U.S.C. §§ 2235(b), 2239(a). The NRC has interpreted this requirement to allow it to conduct a hearing that includes only the applicant and the NRC Staff. *See Exelon Generation Co, L.L.C.*, 62 NRC 5, 49 (2005) (“The scope of the Intervenor’s participation in adjudications is limited to their admitted contentions, *i.e.*, they are barred from participating in the uncontested portion of the hearing. Any other result would contravene the objectives of our ‘contention’ requirements.”). Other parties are not given the right to participate or even comment on the proceeding. *Id.*



## II. NEPA

### A. General Requirements

NEPA, 42 U.S.C. §§ 4321-4370h, requires a federal agency to take a “hard look” at potential environmental consequences of its decisions by preparing an EIS prior to any “major Federal action[] significantly affecting the quality of the human environment.” *Robertson*, 490 U.S. at 350; 42 U.S.C. §4332(c). Preparing an EIS ensures that the agency “will have available, and will carefully consider, detailed information concerning significant environmental impacts” and that “the relevant information will be made available to the larger audience that may also play a role in both the decision-making process and the implementation of that decision.” *Robertson*, 490 U.S. at 349. In order to ensure that “important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast,” an EIS must be prepared *before* any major federal action with significant impacts is taken. *Id.*

The duty to carefully consider information regarding a project's environmental impacts is non-discretionary. *Silva v. Romney*, 473 F.2d 287, 292 (1st Cir. 1973). Federal agencies are held to a "strict standard of compliance" with the Act's requirements. *Calvert Cliffs' Coordinating Commission v. AEC*, 449 F.2d 1109, 1112 (D.C. Cir. 1971).

## **B. Application of NEPA to Reactor Licensing**

Major federal actions requiring an EIS include NRC's issuance or re-issuance of reactor licenses. *New York v. NRC*, 589 F.3d 551, 553 (2d Cir. 2009). NEPA forbids the Commission from issuing a reactor license unless and until it has taken a "hard look" at the environmental impacts of that licensing action. *Baltimore Gas & Electric v. NRDC*, 462 U.S. 87, 97 (1983). Therefore NRC regulations require the preparation of an EIS at both the ESP and COL stages. 10 C.F.R. § 51.75(b) (requiring EIS for ESP), 10 C.F.R. § 51.75(c)(1) (requiring supplementation of ESP EIS at COL stage).

An EIS for a reactor license must address all reasonably foreseeable environmental impacts, including the impacts of reactor accidents. *Carolina Power & Light Co.*, 52 NRC 85, 95 (2000). Reasonably foreseeable accidents with catastrophic impacts must be considered even if their probability of occurrence is low. 40 C.F.R. § 1502.22(b). The EIS must also evaluate alternatives to the licensing of the new reactor, including alternatives that would avoid or mitigate the consequences of severe reactor accidents (*i.e.*, SAMDAs). 10 C.F.R. § 51.71(d); *Limerick Ecology Action*, 869 F.2d at 739. As discussed above in Section I.B., the NRC has decided to address SAMDAs in EAs for design certification rules rather than in EISs for individual COL applications.

### **C. Duty to Supplement**

An agency that has prepared an EIS “cannot simply rest on the original document,” but must be “alert to new information that may alter the results of its original environmental analysis, and [must] continue to take a ‘hard look’ at the environmental effects of [its] planned action, even after a proposal has received initial approval.” *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 557-58 (9th Cir. 2000) (quoting *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 373-74 (1989)). Thus, even where the impacts of a proposed licensing action have been studied and reported in an EIS, NEPA requires the agency to issue a supplement addressing the implications of any new information that could significantly affect its outcome. *Marsh*, 490 U.S. at 371 (“It would be incongruous with [NEPA’s] approach to environmental protection, and with the Act’s manifest concern with preventing uninformed action, for the blinders to adverse environmental effects, once unequivocally removed, to be restored prior to the completion of agency action simply because the relevant proposal has received initial approval”) ; 10 C.F.R. § 51.92.<sup>1</sup> The duty to supplement is “the same” for

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<sup>1</sup> Section 51.92 requires:

- (a) If the proposed action has not been taken, the NRC staff will prepare a supplement to a final environmental impact statement for which a notice of availability has been published in the Federal Register as provided in § 51.118, if:

an EA. *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1152 (9th Cir. 1998), overruled on other grounds in *Land Council v. McNair*, 537 F.3d 981 (9th Cir. 2008) (citing *Price Rd. Neighborhood Ass’n v. United States Dept. of Transp.*, 113 F.3d 1505, 1509 (9th Cir. 1997)). *See also Friends of the Bow*, 124 F.3d 1210, 1218 & n.3 (10th Cir. 1997); *TOMAC v. Norton*, 433 F.3d 852, 861 (DC Cir. 2006) (recognizing supplemental EAs, but noting that the agency has discretion in determining when public involvement is required).

This duty to supplement an EIS or EA is not discretionary and is tempered only by a “rule of reason,” which relieves the agency from the obligation only when “remote and highly improbable consequences” are alleged. *San Luis Obispo Mothers for Peace v. NRC*, 751 F.2d 1287, 1301 (D.C. Circuit 1984), vacated in part and rehearing en banc on other grounds, 760 F.2d 1320 (D.C. Circuit 1985).

Importantly, the NEPA duty to supplement is not avoided by a finding of compliance with NRC safety regulations. Even where the NRC has concluded that a proposed reactor operation meets its basic safety requirements, NEPA still requires the NRC to consider cost-effective alternatives for avoiding or mitigating environmental impacts that are reasonably foreseeable and yet not covered by

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- (1) There are substantial changes in the proposed action that are relevant to environmental concerns; or
  - (2) There are new and significant circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

safety regulations. *Limerick Ecology Action*, 869 F.2d at 741 (holding that the NRC could not rely on the sufficiency of a reactor license application under its safety regulations to avoid considering the cost-effectiveness of severe accident mitigation alternatives under NEPA).

#### **D. NEPA Public Participation Requirements**

Publication and solicitation of comments on a draft EIS “serves a larger informational role” by giving the public “the assurance that the agency ‘has indeed considered environmental concerns in its decision-making process’” and by giving the public “a springboard for public comment.” *Robertson*, 490 U.S. at 349 (quoting *Baltimore Gas & Electric Co.*, 462 U.S. at 97 and citing *L. Caldwell, Science and the National Environmental Policy Act* 72 (1982)). Accordingly, just as the NRC must circulate its initial EIS for public comment, so must it also circulate a supplemental EIS for public comment. 10 C.F.R. § 51.92(d) (“The supplement to a final environmental impact statement will be prepared in the same manner as the final environmental impact statement except that a scoping process need not be used.”) Although the NRC’s regulations do not explicitly require the supplementation of an EA and therefore do not require the circulation of a supplemental EA for public comment, it is reasonable to apply the circulation requirement to EAs for standardized designs because the EAs address SAMDAs that otherwise would be included in reactor-specific EISs. *See* discussion above in

Section II.B. Therefore, circulating a supplemental EA is a necessary part of the public information and participation process with respect to consideration of SAMDAs for COLs. *See TOMAC v. Norton*, 433 F.3d at 861 (suggesting that there may be circumstances where public comment on a supplemental EA is required).

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **I. VOGTLE COL PROCEEDING AND AP1000 RULEMAKING**

#### **A. Commencement of Vogtle COL Proceeding**

On August 15, 2006, Southern Co. applied for an ESP for two new reactors on the site of the existing Vogtle nuclear power plant. After conducting a safety and environmental review, the NRC issued an Environmental Impact Statement (“EIS”) in August 2008. A few months before the EIS was issued, on March 28, 2008, Southern Co. submitted an application for a COL. The application cross-referenced a not-yet-approved amendment to the certified AP1000 standardized design encoded at 10 C.F.R. Part 52, Appendix D.

The Vogtle COL proceeding commenced in September of 2008, when the NRC issued a notice of opportunity for a hearing. 73 Fed. Reg. 53,446-02 (Sept. 16, 2008). BREDL and other Petitioners requested and were granted a hearing on a contention regarding the application’s failure to adequately address the impacts of on-site storage of low level radioactive waste. In 2010, the ASLB dismissed the

contention and closed the hearing record. *Southern Nuclear Co.*, LBP-10-08, 71 NRC 433 (2010).

Although the dismissal of the contention concluded the contested portion of the case, the NRC technical staff continued to review the COL application, including preparation of a Supplemental EIS. A final version of the SEIS was issued in March 2011, shortly after the Fukushima accident commenced and about eleven months before the NRC would issue the COLs for Vogtle 3 & 4. Notice of Availability of Final Supplemental Environmental Impact Statement for Vogtle Electric Generating Plant, Units 3 and 4, 76 Fed. Reg. 16,645 (Mar. 24, 2011).

#### **B. Commencement of Proceeding for Amendment of AP1000 Design Certification Rule**

In 2006, the NRC issued a final rule certifying Westinghouse's standardized AP1000 design for use in applications to build and operate individual reactors. J.A. 847. The AP1000 design certification rule is codified in 10 C.F.R. Part 52 Appendix D.

In 2011, after receiving a series of applications from Westinghouse to revise the AP1000 design, the NRC published a draft amendment to the AP1000 rule in the Federal Register. J.A. 810. The notice set a commenting deadline of May 10, 2011. J.A. 811.

## **II. FUKUSHIMA DISASTER, EMERGENCY PETITIONS AND TASK FORCE REPORT**

### **A. Fukushima Accident and Appointment of NRC Task Force**

In March 2011, a catastrophic accident began at the Fukushima Dai-ichi Nuclear Power Station, Units 1-6, in Okuma, Japan. Following a magnitude 9.0 earthquake and a subsequent tsunami, onsite and offsite power was lost for a sustained period, and offsite radiological releases contaminated a large geographical area of land and ocean.

The NRC Commissioners immediately appointed a Task Force, composed of its most qualified and experienced technical staff, to study the regulatory implications of the accident for the United States. The Commission instructed the Task Force to make a “systematic and methodical review of [NRC] processes and regulations” and recommend changes to its regulations and policies in light of the accident. J.A. 783.

### **B. Emergency Petitions to Suspend NRC Licensing Decisions and AP1000 Rulemaking**

#### **1. Petition to suspend licensing of reactors including Vogtle 3 & 4**

In April 2011, shortly after the Task Force was appointed, Petitioners and other organizations submitted an Emergency Petition, asking the NRC to suspend all pending licensing decisions, including the decision whether to issue a COL for Vogtle 3 & 4, while it investigated the implications of the Fukushima accident.



J.A. 715. The Emergency Petition was supported by an expert declaration from Dr. Arjun Makhijani, stating that the Fukushima accident provided new and significant insights into the inadequacy of (a) NRC regulations to protect public health and safety, and (b) NRC environmental analyses to evaluate the potential health, environmental, and economic costs of reactor and spent fuel pool accidents. J.A. 686, 687-710.

## **2. Petition to suspend AP1000 rule amendment**

At the same time, Petitioners also submitted a petition requesting the NRC to immediately suspend the rulemaking for the amendment of the AP1000 design certification rule pending evaluation of the implications of the Fukushima accident.

J.A. 759. Petitioners asked the NRC to conduct a NEPA review of new and significant information bearing on the AP1000 design that had been raised by the occurrence of the Fukushima disaster. J.A. 760-761, 767. Petitioners supplemented the April 6 Petition on April 20, 2011 (J.A.686), May 24, 2011 (J.A. 675) and June 16, 2011 (J.A. 663).

Despite Petitioners' requests for immediate relief in both petitions, the NRC did not respond until September 2011. *See* Section IV below.

## **C. Task Force Report**

On July 12, 2011, the Task Force issued its report. J.A.567. For the first time since the Three Mile Island accident occurred in 1979, the Task Force

recommended significant improvements to the NRC's basic regulatory program for protection of public health and safety:

In response to the Fukushima accident and the insights it brings to light, the Task Force is recommending actions, some general, some specific, that it believes would be a reasonable, well-formulated set of actions *to increase the level of safety associated with adequate protection of the public health and safety.*

J.A.596 (emphasis added). The Task Force made twelve “overarching” recommendations “to strengthen the regulatory framework for protection against natural disasters, mitigation and emergency preparedness, and to improve the effectiveness of NRC’s programs.” J.A.576-577. These recommendations covered three major areas: risk analysis for earthquakes and floods, equipment upgrades to protect reactor core and spent fuel cooling systems during extended power outages and multi-unit accidents, and emergency planning upgrades for extended power outages and multi-unit accidents. J.A. 577, 647-648. The Task Force also recommended that the NRC review its entire regulatory scheme and implement a risk-informed, defense-in-depth regulatory framework. J.A. 600-601. The recommendations included proposed orders and rulemakings that were applicable to all new reactors. J.A.647-648, 649.

### **III. PETITIONERS' REQUESTS FOR NEPA CONSIDERATION OF TASK FORCE REPORT RECOMMENDATIONS**

#### **A. Petitioners' Contentions in Vogtle COL Proceeding**

In the summer of 2011, after the NRC had failed to respond to the Emergency Petition and the Task Force had issued its report, several of the Petitioners submitted motions to re-open the record of the then-closed Vogtle COL proceeding and admit contentions challenging the failure of the SEIS for Vogtle 3 & 4 to address the environmental implications of the Task Force Report. J.A. 422; J.A. 454.<sup>2</sup> Both contentions were supported by the declaration of Dr. Arjun Makhijani, who stated that the Fukushima accident and Task Force Report present new and significant information regarding the risks to public health and safety and the environment posed by the operation of nuclear reactors. J.A.486. Dr. Makhijani also stated that the integration of this new information into the NRC's licensing process could affect the outcome of safety and environmental analyses for reactor licensing and relicensing decisions and the NRC's evaluation of the fitness of new reactor designs for certification. J.A.489 (§10).

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<sup>2</sup> In addition to raising the same claim as the contention filed by Center for a Sustainable Coast et al., the contention submitted by Blue Ridge Environmental Defense League asserted that the new and significant information arising from the Fukushima Task Force Report included environmental justice issues related to evacuation planning. J.A. 512.

## **B. Petitioners' Emergency Petition and Comments on AP1000 Rule**

Separately, in the April 2011 Emergency Petition discussed above in Section II.B.2., Petitioners requested the NRC to consider the environmental implications of the Task Force Report in the rulemaking proceeding for the AP1000 standardized design on which the Vogtle COL application was based. In August 2011, Petitioners also submitted supplemental comments seeking the same relief. J.A. 523. The Petitioners filed additional supplemental comments urging the NRC to consider the environmental implications of the Fukushima accident and Task Force report on September 29, 2011 and to hold the comment period open for that purpose. J.A. 326.<sup>3</sup>

## **IV. NRC DECISION ON EMERGENCY PETITIONS**

On September 9, 2011, the Commission denied the Petitioners' April 2011 Emergency Petitions with respect to individual reactor licensing decisions and the AP1000 rule, concluding that the Fukushima accident had not yet raised any generic environmental issues that should be addressed in a generic NEPA review. J.A. 356.

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<sup>3</sup> The NRC subsequently declared that it would not consider any comments submitted after June 30, 2011. J.A. 266, 267.

## **V. CONDUCT OF MANDATORY HEARING BY NRC COMMISSIONERS**

On September 28 and 29, 2011, while Petitioners' contentions were pending before the ASLB, the NRC Commissioners presided over an uncontested hearing on the Vogtle COL application. The hearing is described in *Southern Nuclear Operating Co.*, CLI-12-02, 75 NRC \_\_\_, slip op. at 2 (Feb. 9, 2012) ("CLI-12-02"). J.A.95, 96. Under Commission precedent, participation in the hearing was limited to Southern Co. and the NRC Staff. J.A. 419. *See also Exelon Generation Co., L.L.C.*, 62 NRC at 49.

In the hearing, the Commission asked the NRC technical staff to address the question of whether the Fukushima accident had presented new and significant information requiring supplementation of the Vogtle SEIS. J.A. 116. The Commission summarized the NRC Staff's testimony as follows:

[T]he Near-Term Task Force stated: 'The current [U.S.] regulatory approach, and more importantly, the resultant plant capabilities, allow the Task Force to conclude that a sequence of events like the Fukushima accident is unlikely to occur in the United States and some appropriate mitigation measures have been implemented, reducing the likelihood of core damage and radiological releases. Therefore, continued operation and continued licensing activities do not pose an imminent risk to public health and safety. Based on this assessment, the Staff stated that it did not consider the events in its supplemental NEPA review. The Staff further stated that it was awaiting the conclusion of the agency's ongoing evaluation and would apply any new requirement developed from those evaluations, whether safety or environmental in nature. The Staff emphasized that the AP1000 design certification and the Vogtle COL application satisfy current requirements, and that the agency has processes in place to apply final

actions that the Commission might take with respect to long-term recommendations for reactor designs or COLs, as appropriate.

J.A. 116. The Staff also testified that severe accidents like the Fukushima accident have an “extremely low probability,” despite their “potentially high consequences.” J.A. 168.

## **VI. ASLB DECISION REJECTING CONTENTION**

On October 18, 2011, the ASLB rejected as premature Petitioners’ August 2011 contentions. J.A.235. The ASLB first expressed “considerable doubt as to how such weight and effect could attach to a mere report that had neither received the endorsement of the Commission nor, more importantly, led to some concrete affirmative action being taken in light of its content.” J.A. 245. Second, citing CLI-11-05, the ASLB found that that Commission could not have stated “more precisely and definitively” that:

it remains much too early in the process of assessing the Fukushima event in the context of the operations of reactors in the United States to allow any informed conclusion regarding the possible safety or environmental implications of that event regarding such operation.

J.A. 247. In this regard the ASLB noted the Commission had “stressed . . . that while under active study, none of [the Task Force] findings and recommendations has been accepted.” *Id.* Thus, the ASLB concluded that the contention was “premature.” J.A. 248. The ASLB also found it “worthy of note” that none of the Petitioners had pointed to any “unique characteristics of the site of the particular

reactor that might make the content of the Task Force Report of greater environmental significance to that reactor than to United States reactors in general.” J.A. 247-248. Petitioners submitted a petition for review of LBP-11-27 to the Commission. J.A. 294.

## **VII. NRC ADOPTION OF TASK FORCE REPORT AND PETITIONERS’ RE-SUBMISSION OF CONTENTION**

### **A. NRC Adoption of Task Force Recommendations**

In October 2011, the Commission adopted all of the Task Force recommendations and ordered the NRC Staff to implement them within the following five years.

J.A. 316. The manner of implementation was left undecided. *Id.* For pending reactor license applications, the Commission did not require implementation of the recommendations before licensing or state that the recommendations would be addressed in the EISs for the reactor licensing decisions.

### **B. Petitioners’ Re-submission of Contention**

Upon the Commission’s adoption of the Task Force recommendations, Petitioners Center for a Sustainable Coast, Georgia Women’s Action for New Directions, and Southern Alliance for Clean Energy re-submitted their contention and asked the ASLB to reconsider its decision in light of the Commission’s decision to adopt the Task Force recommendations *in toto*. J.A.308.

On Nov. 30, 2011, the ASLB denied the motion on the ground that the adoption of the recommendations had not “materially changed matters.” J.A. 226, 230-231.

### **VIII. COMMISSION DECISIONS REJECTING PETITIONERS’ REQUESTS FOR NEPA COMPLIANCE**

Starting with the issuance of the final AP1000 design certification rule in December 2011, the Commission itself issued a series of decisions refusing to admit Petitioners’ contentions or to consider the environmental implications of the Task Force Report in a supplemental EA or EIS for the AP1000 Rule or a supplement to the SEIS for the Vogtle COL.

#### **A. AP1000 Design Certification Rule**

On December 30, 2011, the NRC issued a rule certifying the AP1000 standardized design on which the proposed new Vogtle reactors are based. J.A.193. The NRC asserted that no changes to the AP1000 design were required to meet the Task Force recommendations because the Task Force itself had already concluded that the AP1000 design has “many” of “the features and attributes necessary to address the Task Force recommendations.” J.A. 195. The rule did not specify which of the “many” features and attributes it was referring to. In any event, the Commission noted that:

Even if the Commission concludes at a later time that some additional action is needed for the AP1000, the NRC has ample opportunity and legal authority to modify the AP1000 DCR to implement NRC-



required design changes, as well as to take any necessary action to ensure that holders of COLs referencing the AP1000 also make the necessary design changes.

*Id.* The NRC proposed to make no changes to the EA for the rule in light of the Fukushima Task Force recommendations. J.A. 210.

**B. CLI-12-02: Decision Concluding Mandatory Hearing for Vogtle 3 & 4**

On February 9, 2012, the NRC Commissioners issued CLI-12-02, concluding the uncontested part of the license hearing and approving the issuance of COLs for Vogtle 3 & 4. A majority of the Commissioners conceded that “[t]he Fukushima events were significant, warranting enhancements in safety measures.” J.A. 176. Yet, the majority made no commitment to implement the Task Force recommendations other than as a matter of NRC post-licensing enforcement discretion. J.A. 177.

In the section of the opinion entitled “Sufficiency of the Staff’s Environmental Review,” the majority found the Staff’s analysis was “reasonably supported in logic and fact and sufficient to support the Staff’s conclusions.” J.A. 173. The Commission did not mention the Fukushima accident or the Task Force Report at all in this discussion.

NRC Chairman Jaczko dissented from CLI-12-02, protesting that the majority was issuing the Vogtle COL “as if Fukushima never happened.” J.A. 259-260. Observing that the Fukushima accident “has fundamentally altered our

understanding and appreciation of the impacts of a catastrophic natural disaster,” the Chairman expressed grave concern that the NRC had yet to implement some of the most urgent recommendations applicable to Vogtle, even to the point that it had not “determined whether implementation will be based on adequate protection [of public health and safety].” J.A. 182-183. He also noted that the expectation that newly licensed reactors (such as Vogtle) would incorporate Fukushima-related safety measures was an “implicit underpinning” of the Commission’s decision in CLI-11-05 not to stop new reactor licensing while it reviewed the implications of the Fukushima accident, as it had done after the 1979 Three Mile Island reactor accident. J.A.184.

**C. Issuance of COLs for Vogtle 3&4**

On February 16, 2012, while Petitioners’ request for review of LBP-11-27 was pending before the Commission, the NRC issued COLs and Limited Work Authorizations for Vogtle Units 3 and 4. J.A.34, 35, 53, 71, 83. The issuance of the COLs and LWAs allowed Southern Co. to immediately begin construction of the new reactors.

**D. CLI-12-07: Decision Rejecting Petitioners’ Contentions Seeking Supplement to Vogtle 3 & 4 SEIS**

On March 16, 2012, the Commission issued CLI-12-07, upholding the ASLB’s decision in LBP-11-27 to reject Petitioners’ contentions in the Vogtle COL proceeding. J.A. 19. The Commission refused to disturb the ASLB’s

conclusion that Petitioners “have not identified environmental effects from the Fukushima Dai-ichi events that can be concretely evaluated at this time, or identified specific new information challenging the site-specific environmental assessments [for Vogtle 3&4].” J.A. 27. According to the Commission, the information generated by the Fukushima accident remains “inchoate” and has not “mature[d] into something that . . . might affect our [environmental] review.” J.A. 32.

The Commission also asserted that Petitioners’ contention was inadmissible because Petitioners had not shown that the Task Force Report presented a “seriously different picture of the environmental impact of the proposed project from what was previously envisioned.” J.A. 28 (citing *Hydro Resources, Inc.*, CLI-99-22, 50 NRC 3, 14 (1999) (citing *Marsh*, 490 U.S. at 373; *Sierra Club v. Froehlke*, 816 F.2d 205, 210 (5th Cir. 1987); *Private Fuel Storage, L.L.C.*, CLI-06-3, 63 NRC 19, 28 (2006)).

Finally, the Commission faulted Petitioners for failing to “point to any unique characteristics” of the Vogtle site that might give the content of the Task Force Report “greater environmental significance to that reactor than to United States reactors in general.” J.A. 30.

**E. CLI-12-11: Decision on Motion to Stay Effectiveness of Vogtle COLs**

On April 16, 2012, the Commission issued a decision denying Petitioners' February 16, 2012 motion to stay the effectiveness of the Vogtle COL decision pending this Court's review. J.A. 1. The Commission summarized the grounds on which it had refused to re-open the contested proceeding to consider Petitioners' claim that it should supplement the Vogtle SEIS to consider new and significant information stemming from the Task Force Report, reiterating its conclusion that Petitioners "have not demonstrated that the Fukushima events or any regulatory responses to those events would raise environmental impacts that differ significantly from the impacts that the NRC has already reviewed and addressed in the ESP –[EIS] or the COL [SEIS] for Vogtle." J.A.12-13. According to the Commission, based on the Staff's testimony in the mandatory hearing, it:

ultimately accepted the Staff's position that our regulatory approach and our regulated plants' capabilities 'allow the Task Force to conclude that a sequence of events like the Fukushima accident is unlikely to occur in the United States and [that] continued operation and continued licensing activities do not pose an imminent threat to public health and safety.'

Given the specific consideration we gave to the Fukushima events, we disagree with Petitioners' conclusion that we consider severe accidents such as Fukushima 'too unlikely' to be considered in an EIS. What we instead concluded was that the Staff's analysis of the proposed action in *Vogtle* already properly accounts for severe accidents generally, and appropriately concludes, more specifically, that the Fukushima events did not alter the Staff's conclusion that severe accident risks at Vogtle remain small.

J.A. 14-15. The Commission added the disclaimer that:

None of this is to say that we consider the Fukushima events anything less than ‘significant’ as that word is colloquially used. . . . We considered Fukushima-related arguments at the mandatory hearing . . . in CLI-12-2, and throughout CLI-11-5. Further, we have undertaken a significant effort, through the Fukushima Task Force’s Near-Term Report and other Staff activities associated with lessons learned from the events, to develop an appropriate regulatory response. . . .

J.A. 15. And “[l]ikewise,” the Commission stated that “we wish to emphasize that our denial of a stay today in no way diminishes the seriousness with which we and our Staff continue to take the Fukushima events and their potential ramifications for our own regulations [sic] of nuclear power plants.” *Id.*, slip op. at 15.

## **IX. PETITIONS FOR REVIEW AND STAY MOTION TO COURT**

On February 16, 2012, Petitioners asked this Court to review the AP1000 rule and moved the Commission for a stay of the Vogtle licensing decisions. *See* Section VIII.E. above. On March 20, 2012, Petitioners sought Court review of CLI-12-07 and all related Vogtle licensing decisions. On April 3, 2012, the Court consolidated the petitions for review of the Vogtle licensing decisions and the AP1000 rule and established a briefing schedule.

The Commission denied Petitioners’ stay motion on April 16, 2012, whereupon Petitioners submitted a stay motion to the Court. Respondents have answered the motion and a decision from the Court is now pending.

## **SUMMARY OF ARGUMENT**

The catastrophic nuclear disaster at the Fukushima Dai-ichi power plant caused the NRC to reevaluate its entire regulatory program for providing an adequate level of protection to public health and safety. Fully adopting the recommendations of its own Fukushima Task Force, the Commission committed to making significant regulatory changes in three major areas – risk analysis for earthquakes and floods, equipment upgrades to protect reactor core and spent fuel cooling systems during extended power outages and multi-unit accidents, and emergency planning upgrades for extended power outages and multi-unit accidents. The Commission proposed to implement some recommendations immediately but a significant number were postponed into the future, raising questions as to whether and how they ultimately would be implemented.

At the time it committed to making these regulatory changes, the Commission had before it both Southern Co.'s application for COLs for Vogtle 3 & 4 and Westinghouse's application for amended certification of the underlying AP1000 design. Instead of considering the impact the changes would have on the decisions before it, the Commission pushed ahead as if Fukushima never happened. But NEPA prohibits such voluntary ignorance. *See Marsh v. Oregon Natural Resource Council*, 490 U.S. 360, 371 ("NEPA ensures that the agency will

not act on incomplete information, only to regret its decision after it is too late to correct.”)

By the Commission’s own admission, the information brought to light in the Task Force Report was both new and significant. Accordingly, the Commission violated NEPA when it issued a COL for Vogtle 3 & 4 without considering this information in a supplemental SEIS and when it certified the AP1000 reactor design without a supplemental EA.

These violations are all the more egregious because the Commission denied Petitioners the opportunity for a hearing on whether supplemental NEPA analysis was required. Instead, at the same time as Petitioners were foreclosed from being heard, the Commission opened its doors to Southern Co. and the NRC Staff. Based on the testimony of these parties at the COL mandatory hearing – and at the exclusion of Petitioners – it decided not to conduct further environmental analysis. NEPA does not allow the public to be excluded from the decision making process. *See id.* (“The broad dissemination of information mandated by NEPA permits the public and other government agencies to react to the effects of a proposed action at a meaningful time.”)

The Atomic Energy Act likewise prohibits the Commission’s refusal to grant Petitioners a hearing. Indeed, the Act ensures that parties impacted by the Commission’s decision have a right to be heard.

Accordingly, and as set forth in more detail below, the Commission's decisions to issue the Vogtle 3 & 4 COLs and certify the AP1000 design should be overturned and the NRC should be ordered to supplement the environmental analyses supporting those decisions and address the environmental implications of the Fukushima Task Force recommendations. At the very least, Petitioners should be granted the hearing to which they are entitled on the question of whether NEPA requires supplementation of the SEIS and the EA in these circumstances.

### **STANDING**

Petitioners are membership organizations that have Article III standing under the test established in *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 343 (1977). First, each Petitioner organization represents members that satisfy the three elements of standing—injury-in-fact, causation and redressability. *Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-81 (2000). As demonstrated by Petitioners' members' standing declarations, these individuals live or work in close proximity to proposed nuclear power plants that are intended to be built to the AP1000 design, including Vogtle 3 & 4. These members are concerned about NRC's failure to adequately consider the environmental impacts of Vogtle 3 & 4 in the FSEIS. *See, e.g.*, Declarations of Charles N. Utley (March 19, 2012) and other standing declarations attached as Exhibits 1-17 to Standing Addendum. The



NRC's failure to address their concerns in a supplement to the FSEIS for Vogtle 3&4 or a supplement to the EA for the AP1000 design constitutes an injury to their interests for purposes of demonstrating standing. *See Nuclear Information and Resource Service v. NRC*, 509 F.3d 562, 567 (DC Cir. 2007) ("The Supreme Court and this Court have repeatedly held that individuals who live near a proposed federal project and allege that they will suffer concrete injury from the project have standing in NEPA and other procedural rights cases."); *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 572 n.7 (1992) (redressability requirement relaxed for procedural injuries). Moreover, these members' concerns would be remedied if NRC were to support the licensing of the Vogtle reactors and the approval of the underlying design with an adequate environmental analysis. Accordingly, these members have standing to sue in their own right.

Second, this case involves interests germane to Petitioners' institutional interests. *See, e.g.*, statements of organizational purposes at Blue Ridge Environmental Defense League: Who and What We Are, <http://www.bredl.org/about.htm>; Center for a Sustainable Coast: Who We Are, <http://www.sustainablecoast.org/new.html>; Friends of the Earth: About Us, <http://www.foe.org/about-us>; Georgia Women's Action for New Directions: Who We Are: <http://gawand.org/2010/03/07/who-we-are/>; North Carolina Waste Reduction and Awareness Network: <http://www.ncwarn.org/about-us/>; Nuclear

Information and Resource Service: About NIRS, <http://www.nirs.org/about/nirs.htm>; Nuclear Watch South: About NWS, <http://www.nonukesyall.org/about.html>; and Southern Alliance for Clean Energy: Who We Are, <http://www.cleanenergy.org/index.php?/Who-We-Are.html> (all websites last visited May 11, 2012).

Finally, none of the claims asserted here, nor the relief requested, requires their individual participation in the suit. Accordingly, Petitioners have standing under *Laidlaw* and *Hunt*.

## **ARGUMENT**

### **I. STANDARD OF REVIEW**

When an agency makes a legal conclusion that NEPA does not apply to a given action, courts will exercise *de novo* review and apply a test of “reasonableness.” *Citizens Against Rails-to-Trails v. Surface Transp. Bd.*, 267 F.3d 1144, 1151 (D.C. Cir. 2001) (citing *Northcoast Env'tl. Ctr. V. Glickman*, 136 F.3d 660, 667 (9th Cir. 1998); *Sugarloaf Citizens Ass’n v. F.E.R.C.*, 959 F.2d 508, 511 (4th Cir. 1992); *Goos v. I.C.C.*, 911 F.2d 1283, 1286 (8th Cir. 1990)). Courts review an agency’s factual findings in support of its decision not to issue an EIS under an “arbitrary and capricious” standard. *Marsh*, 490 U.S. at 376; 5 U.S.C. § 706(2)(A).

The record in this case shows that the Commission’s refusal to supplement the Vogtle SEIS or the AP1000 EA was based on undisputed facts and its other errors are procedural violations of NEPA and the AEA that did not involve factual determinations. Accordingly, it is appropriate for the court to exercise *de novo* review and apply a reasonableness test to the NRC’s refusal to supplement the Vogtle SEIS or the AP1000 EA.

## **II. AS A MATTER OF LAW, THE NRC VIOLATED NEPA BY REFUSING TO SUPPLEMENT THE VOGTLE SEIS OR THE AP1000 EA AND BY EXCLUDING PETITIONERS FROM ITS MERITS DETERMINATIONS ON THE ISSUE**

### **A. The NRC's Own Actions and Statements Establish that the Fukushima Task Force Recommendations Constitute New and Significant Information**

The NRC's refusal to supplement the Vogtle 3 & 4 SEIS or the AP1000 EA to address new and significant information presented by the conclusions and recommendations of the Fukushima Task Force Report constitutes clear legal error that is entitled to no deference by a reviewing court. Having adopted the Task Force recommendations in their entirety and having agreed to apply them for the purpose of upgrading the NRC's basic safety standards, the Commission has effectively conceded, as a matter of law, that the recommendations constitute new and significant information. The adopted recommendations are "new" because they propose changes and additions to the NRC's regulatory scheme that did not previously exist; and they are "significant" because they would alter the standards that the NRC deems essential for adequate protection of public health and safety.

The recommendations are also significant in the respect that they cover a wide range of safety and environmental issues that fundamentally affect the protection of the public and environment against reactor risks, including earthquake and flooding risks, extended power outages, multi-unit accidents, evacuation planning, and the recommendation for a comprehensive review of the

*entire* regulatory system. *See* J.A.576. Moreover, the Commission itself has repeatedly emphasized the significance of the Fukushima accident. *See* J.A. 176 (conceding that “[t]he Fukushima events were significant, warranting enhancements in safety measures”); J.A. 15 (conceding that the Commission considers to the Fukushima to be nothing less than “‘significant’ as that word is colloquially used” and providing extensive citations to the NRC’s “significant effort” to respond to the lessons learned from the Fukushima accident).

If the Fukushima Task Force recommendations were new and significant enough to warrant changes to the NRC’s regulatory system for protecting the public against reactor accidents, then they are new and significant enough to warrant discussion in a supplement to the SEIS for Vogtle 3 & 4 and a supplement to the EA for the AP1000 rule. *See San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016, 1031 (9th Cir. 2006) (holding that the NRC’s NEPA decisions must be consistent with its policy pronouncements).

**B. The NRC’s Rationalizations for Repudiating the Legal Significance of its Actions and Statements Are Unreasonable**

The NRC attempts to sidestep the legal consequences of its concessions by arguing, variously, that consideration of the environmental implications of the Fukushima accident is “premature” (J.A. 27-29); that the information is not new because the environmental analysis in the current SEIS already encompasses severe Fukushima-like accidents (J.A. 13-15); and that Fukushima-like accidents

are “not imminent” or too improbable to warrant NEPA consideration. J.A. 116; J.A. 14. Not only are these arguments internally inconsistent, but they simply are not plausible in light of the Commission’s decision to adopt and apply the Task Force recommendations.

**1. Consideration of Task Force recommendations is not premature**

Having adopted every Task Force recommendation and mounted a “significant effort” to respond to the accident in its regulatory program (J.A. 14-15), the Commission cannot credibly state that the lessons of the Fukushima accident have not yet “mature[d]” enough for a determination regarding their environmental significance to its licensing decisions. J.A. 32. The NRC would not have adopted the Task Force recommendations if it considered itself to lack enough information to understand their importance.<sup>4</sup>

In any event, the claim that it is too early to evaluate the significance of the Fukushima accident is fundamentally inconsistent with the Commission’s claim that the environmental implications of a Fukushima-like accident have already

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<sup>4</sup> Neither of the cases cited by the NRC to support the proposition of prematurity are relevant to the instant case. *See* CLI-12-07, slip op. at 14 and n.48 (citing *Town of Winthrop v. FAA*, 535 F.3d 1, 4 (1st Cir. 2008); *Village of Bensenville v. FAA*, 457 F.3d 52, 71(D.C. Cir. 2006)). In both cases, the agency conducted some form of NEPA review on the information in dispute. The issue was whether additional review was required. Here, by contrast, the NRC has refused to conduct any NEPA analysis whatsoever of information it has found to be both new and significant.

been considered in the SEIS for Vogtle 3 & 4. J.A. 14; *but see* J.A. 116. The Commission cannot have it both ways: claiming on the one hand to have enough information to determine that it has already considered Fukushima-like accidents in its environmental analysis for Vogtle, while on the other hand telling Petitioners it does not have enough information with which to supplement the Vogtle SEIS.

Similarly, the Commission reasonably cannot assure the public of the “seriousness” with which it takes “the Fukushima events and their potential ramifications for [NRC’s] own regulation of nuclear power plants” (J.A. 15) at the same time it refuses to address Fukushima events in a supplemental SEIS for Vogtle 3 & 4. *San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016, 1030-1 (9th Cir. 2006) (rejecting NRC rationale for refusing to conduct a NEPA analysis that was inconsistent with agency policy pronouncements). As the Court explained in *San Luis Obispo Mothers for Peace*:

We find it difficult to reconcile the Commission's conclusion that, as a matter of law, the possibility of a terrorist attack on a nuclear facility is “remote and speculative,” with its stated efforts to undertake a “top to bottom” security review against this same threat. Under the NRC's own formulation of the rule of reasonableness, it is required to make determinations that are consistent with its policy statements and procedures. Here, it appears as though the NRC is attempting, as a matter of policy, to insist on its preparedness and the seriousness with which it is responding to the post-September 11th terrorist threat, while concluding, as a matter of law, that all terrorist threats are “remote and highly speculative” for NEPA purposes.

449 F.3d at 1031. For the same reasons, this Court should reject the NRC’s internally inconsistent defenses for refusing to prepare a supplemental SEIS for Vogtle 3 & 4.<sup>5</sup>

## **2. The Vogtle SEIS did not consider the environmental implications of the Task Force Report**

The NRC claims that there is no need to address the Fukushima Task Force recommendations in a supplement to the Vogtle SEIS that was issued prior to the Fukushima accident, because the SEIS has already considered “Fukushima-like” accidents. J.A. 13-15. As a matter of law, this defense is not credible. In the very act of adopting and agreeing to apply the Task Force recommendations, the NRC has conceded that its basic regulatory program is inadequate to address the accident risks highlighted by the Task Force Report and therefore must be amended. As stated in Petitioners’ rejected contention, compliance by the Vogtle COL with these existing safety regulations forms the primary basis for the Vogtle

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<sup>5</sup> In CLI-12-11, the NRC asserts that the word “significant” means something different “colloquially” than it does under NEPA. J.A. 15. This is yet another example of the Commission’s inconsistency. The concept of NRC’s use of a “colloquial” meaning of the word “significant” is nonsensical. The NRC’s decision documents use adjectives like “significant” in the context of its duties as a regulator under the AEA and NEPA, not as a conversationalist. Given the overlap between the public safety and environmental concerns of the AEA and NEPA, *see* page 5 above, any issues that are “significant” for purposes of revamping the NRC’s safety regulations are necessarily “significant” under NEPA. It is also important to note that the NRC never actually states that the Fukushima accident or the Fukushima Task Force recommendations are insignificant from a regulatory standpoint under the AEA.



SEIS's conclusion that the environmental impacts of operating Vogtle 3 & 4 are "small."<sup>6</sup>

In addition, the Commission claims that the NRC Staff "properly account[ed] for severe accidents generally" in the SEIS, and it "appropriately conclude[d] more specifically, that the Fukushima events did not alter the Staff's conclusion [in the pre-Fukushima SEIS for Vogtle 3 & 4] that severe accident risks at Vogtle remain small." J.A. 14-15.

In making this argument, the Commission misses the fundamental changes wrought by the Fukushima accident and the Commission's adoption of the Task

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<sup>6</sup> As stated in the contention:

For example, in Section 5.10 the Vogtle EIS concludes that the radiological impacts of a design basis accident at proposed Units 3 and 4 would be "SMALL." EIS at 5-17. This conclusion is based on the fact that the new Vogtle reactors will be built to a certified design that has been approved by the NRC under its safety standards. As explained in the EIS for the Vogtle Early Site Permit: "the bases for analyses of postulated accidents for this design are well established because they have been considered as part of the NRC's advanced reactor design certification process." NUREG-1872 at 5-77; *see also* EIS at 5-17 ("The DBAs listed in the table [in this EIS] are the same as those being considered in the design certification and those that were considered in the ESP review."). With the issuance of the Task Force Report, these "well established" "bases" are now in question. If the design basis for the reactor does not incorporate accidents that should be considered in order to satisfy the adequate protection standard, then it is not possible to reach a conclusion that the design of the reactor adequately protects against accident risks. *See* Makhijani Declaration at para. 7.

J.A. 445.

Force recommendations on its system for review of safety and environmental issues. As stated by NRC Chairman Jaczko in his dissent from CLI-12-02, the Fukushima accident “has fundamentally altered our understanding and appreciation of the *impacts* of a catastrophic natural disaster.” J.A. 182-183(emphasis added). In addition, as a result of adopting the Task Force Report recommendations, the Commission may no longer conclude that just because severe accident risks are “small,” mitigation may be avoided if it is too costly. Instead, by adopting and applying the Task Force recommendations, the NRC will transform measures that formerly were considered unnecessary or dispensable if too costly into mandatory safety requirements. This sea change in the NRC’s regulatory approach necessarily will have a significant effect on consideration of SAMDAs in an EIS or EA, effectively tipping the scales toward the adoption of more rigorous and expensive measures. Consideration of the Fukushima Task Force recommendations in an EIS could even affect the bottom-line decision of whether to go ahead with a nuclear project, as explained by Petitioners’ expert, Dr. Arjun Makhijani, in his declaration supporting Petitioners’ contention:

First, the environmental analysis would have to consider the implication of the Task Force Review that compliance with current NRC safety requirements does not adequately protect public health and safety from severe accidents and their environmental effects. Second, for reactors that are unable to comply with new mandatory requirements, it could result in the denial of licenses. Third, the cost of adopting mandatory measures necessary to significantly improve

the safety of currently operating reactors and proposed new reactors is likely to be significant.

J.A. 489 (¶10). Thus, a supplemental SEIS considering the recommendations of the Fukushima Task Force would be very different from the pre-Fukushima SEIS.

**3. The Commission's own statements and actions contradict its claim that Fukushima-like accidents are too "improbable" or "not imminent"**

The Commission's assertions that Fukushima-like accidents do not warrant NEPA consideration because they are too "improbable" or "not imminent" are similarly contradicted by its claim to have mounted a "significant effort" to respond to the accident in its regulatory program. J.A. 14-15. The NRC would not have adopted the Task Force recommendations if it considered the potential of future Fukushima-like accidents to be improbable.

In refusing to supplement the Vogtle 3 & 4 SEIS, the NRC also misapplies the legal concept of "imminent risk." *See* J.A. 116; J.A. 14. As long used by the Commission, the "imminent risk" standard is applied to the question of whether operating nuclear reactors pose such an "imminent risk" that they should be shut down immediately. *See, e.g., Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-6, 43 NRC 123, 128 (1996) (finding no "imminent hazard" that would warrant shutdown of a reactor). The imminent risk standard is therefore completely distinguishable from the NEPA standard of whether environmental

impacts are “reasonably foreseeable” even if their likelihood is low. 40 C.F.R. § 1502.22(b).

**C. The NRC Violated NEPA by Refusing to Supplement the SEIS With New and Significant Information Before Issuing the COLs for Vogtle 3 & 4**

The NRC has neither denied the significance of the Task Force recommendations nor delayed their adoption. Yet, it has postponed the implementation of the Task Force recommendations until sometime in the future, after Vogtle 3 & 4 are licensed. By proceeding to license the reactors, without either imposing the Task Force recommendations as part of the licensing decision or addressing their significance in an environmental analysis, the NRC violates NEPA’s fundamental goal of ensuring that agencies “do not make decisions based on incomplete information.” *Town of Winthrop v. FAA*, 535 F.3d at 4 (citing *Marsh v. Or. Natural Res. Counsel*, 490 U.S. 360, 371 (1989)).

**D. The NRC Violated NEPA by Refusing to Supplement the EA For the AP1000 Rule or to Circulate it for Public Comment**

**1. The Commission violated NEPA by refusing to supplement the EA for the AP1000 rule to address new and significant information raised by the Task Force Report**

The standard for preparing a supplemental EA “is the same as for preparing an SEIS.” *Idaho Sporting Congress*, 137 F.3d at 1152. Therefore, just as the Commission obligated itself to supplement the Vogtle SEIS when it adopted the Task Force recommendations (*see* discussion above at 37-38, so it obligated itself

to supplement the AP1000 EA to address the effect of those recommendations on the SAMDAs and their relative costs and benefits.

Instead of supplementing the AP1000 EA as required by NEPA and addressing SAMDA considerations required by its own regulations, the NRC rationalized and prevaricated in the final AP1000 rule. According to the Commission, no further analysis of the regulatory implications of the Task Force recommendations was required because the Task Force itself had already concluded that the AP1000 design “has many of the features and attributes necessary to address the Task Force recommendations.” J.A. 195. But the NRC does not identify which of those “features and attributes necessary to address the Task Force recommendations” have yet to be implemented. Instead, it merely asserts that:

Even if the Commission concludes at a later time that some additional action is needed for the AP1000, the NRC has ample opportunity and legal authority to modify the AP1000 DCR to implement NRC-required design changes, as well as to take any necessary action to ensure that holders of COLs referencing the AP1000 also make the necessary design changes.

*Id.* Such vague statements fall far short of the evidence needed by the Court to evaluate whether an agency has made a “reasoned decision based on its evaluation of the significance – or lack of significance – of the new information.” *Marsh*, 490 U.S. at 378. And by postponing consideration of how the Fukushima Task Force recommendations will affect the AP1000 design until sometime after the design is

certified (and thus after it is incorporated into actual reactors under construction such as Vogtle 3 & 4), the NRC violated the cardinal principle of NEPA that environmental issues must be analyzed *before* action is taken. *Robertson*, 490 U.S. at 349.

**2. The Commission violated NEPA by failing to circulate a supplemental EA for public comment.**

The NRC's decisions with respect to the SAMDAs discussed in the EA for the AP1000 rule will be applied to Vogtle 3 & 4. *See* discussion above at 5-7. Accordingly, the EA for the AP1000 should be supplemented and recirculated for public comment, consistent with the requirements for the Vogtle 3 & 4 EIS. *See* 10 C.F.R. § 51.92.

Although this Court has questioned whether NEPA requires recirculation of a supplemental EA for public comment, *see TOMAC*, 433 F.3d at 861, the circumstances of this case warrant recirculation. As discussed above at 6-7, the two reasons that NRC has decided to address SAMDAs for the AP1000 design in an EA have nothing to do with the environmental significance of SAMDAs. First, the NRC prepares an EA instead of an EIS for design certification rules because a design certification rulemaking, unless it is applied in an actual reactor license, has no actual physical environmental impacts. SAMDAs, of course, have great environmental significance when applied.

Second, the NRC relegates the discussion of SAMDAs to the design certification EA instead of the EIS for an individual reactor COL because it is more practical to consider SAMDAs at the design stage than at the construction stage. Again, this reason has nothing to do with the environmental significance of SAMDAs.

Accordingly, because the analysis of the SAMDAs in the AP1000 EA could have an effect on the outcome of the environmental analysis for the Vogtle COLs, the supplemental EA addressing new and significant information raised by the Task Force recommendations should be re-circulated for public comment.

**E. The NRC Violated NEPA's Public Participation Requirements by Making a Merits Determination Regarding the Environmental Implications of the Fukushima Accident in a Hearing From Which It Excluded Petitioners**

**1. The NRC may not shift its responsibility for NEPA compliance to Petitioners**

The burden of NEPA compliance falls squarely on federal agencies and not on the members of the public who seek to enforce it. *Dubois v. U.S. Dept. Of Agric.*, 102 F.3d 1273, 1291 (1st Cir. 1996); *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 559 (9th Cir. 2000). *See further Friends of the River v. FERC*, 720 F.2d 93, 123 (D.C. Cir. 1983) (stating that "NEPA expressly places the burden of compiling information on the agency so that the public and interested government departments can conveniently monitor and criticize the agency's action.") (internal

citations omitted). NEPA requires agencies to analyze new and significant information relating to the environmental impacts of an agency action and allow the public to respond. 10 C.F.R. § 51.92. *See also Town of Winthrop v. FAA*, 535 F.3d at 4 (citing *Marsh v. Or. Natural Res. Council*, 490 U.S. 360 (“The goal of NEPA is to focus attention on the possible environmental effects of proposed actions, which in turn furthers two important purposes: to ensure that agencies do not make decisions based on incomplete information, and to provide information about environmental effects to the public and other governmental agencies in a timely fashion so that they have an opportunity to respond.”)). In violation of this basic principle, the NRC attempted to shift its NEPA burden onto Petitioners by refusing to address the environmental implications of the Task Force recommendations – or even to grant Petitioners a hearing on whether it should do so – unless Petitioners explained the significance of the Task Force recommendations “for the unique characteristics” of Vogtle 3 & 4 or to “identify information that was not considered in the environmental review for the application.” J.A.31.

The NRC’s demand that Petitioners provide a technical analysis of the precise effects of the Fukushima recommendations on the Vogtle 3 & 4 COL application or the AP1000 EA goes far beyond the “notice” required by NEPA or the demands of 10 C.F.R. § 2.309(f)(1) and unlawfully shifts the burden of NEPA



compliance onto Petitioners. *Dubois*, 102 F.3d at 1291. Petitioners satisfied their NEPA burden by asserting that the Task Force recommendations raised significant safety and environmental issues that had not previously been considered by the NRC in the EIS for Vogtle 3 & 4 or the EA for the AP1000 Rule. Having conceded the general safety significance of the Task Force recommendations, the NRC was required by NEPA to explain the technical environmental significance of the recommendations for the new Vogtle reactors in supplemental NEPA analyses.

## **2. The Commission violated NEPA by excluding Petitioners from its decision-making process**

The opportunity for broad public participation in environmental decisions is a key NEPA requirement. *See Marsh v. Or. Natural Res. Council*, 490 U.S. at 371. The Commission violated this requirement by basing its denial of Petitioners' NEPA claim on merits determinations made in a closed evidentiary hearing with Southern Co., from which it barred Petitioners. CLI-12-11, slip op. at 4 and n.17 (citing *Exelon Generation Co., LLC*, CLI-05-17, 62 NRC 5, 49 (2005) ("The scope of the Intervenor's participation in adjudications is limited to their admitted contentions, i.e., they are barred from participating in the uncontested portion of the hearing. Any other result would contravene the objectives of our 'contention' requirements.")). As discussed in CLI-12-11, while the issue of the admissibility of Petitioners' contention was pending before the ASLB, the Commission held a "mandatory" evidentiary hearing, limited to participation by Southern Co. and the

NRC technical Staff, in which it “considered at length the possibility of severe accidents, including those like the accident at Fukushima” and examined the Task Force Report and its environmental implications. *Id.*, slip op. at 13-14. Thus, in violation of NEPA, the NRC took comment from Southern Co. and the NRC Staff on the question of whether to supplement the Vogtle SEIS to address Fukushima issues, but gave Petitioners no comparable opportunity. The resulting one-sided decision violates NEPA’s requirement to consider all relevant viewpoints on environmental issues. *See e.g.* 40 C.F.R. § 1506.6.

### **III. THE COMMISSION VIOLATED THE AEA BY REFUSING PETITIONERS’ REQUEST FOR A HEARING ON THE QUESTION OF WHETHER IT MUST SUPPLEMENT THE VOGTLE 3 & 4 EIS**

As discussed above at 7-8, the AEA requires the NRC to grant an adjudicatory hearing on issues of NEPA compliance that are material to its licensing decisions. 10 C.F.R. § 51.104. Under that standard and the admissibility standards of 10 C.F.R. § 2.309(f)(1), the NRC should have admitted Petitioners’ contention seeking a hearing on whether the SEIS for Vogtle 3 & 4 must be supplemented to address new and significant information presented by the Fukushima Task Force recommendations. Neither of the rationales offered by the NRC in CLI-12-07 for refusing Petitioners a hearing is legally defensible.

The NRC’s primary ground for denying admission of Petitioners’ contention is that the contention was premature. J.A. 27. For all the reasons discussed above

in Section II.B, the Commission’s rationale is self-contradictory and self-defeating. By simply adopting the Task Force recommendations, the Commission has established as a matter of law that it is prepared to reach conclusions about their regulatory significance.

Second, the Commission argues that the contention fails because it does not point to any “unique characteristics” of the Vogtle site that might give the content of the Task Force Report ““greater environmental significance to that reactor than to United States reactors in general.”” J.A. 31-32. This rationale – that to challenge the inadequacy of an EIS one must show that the inadequacy is unique to that EIS among all others – has no foundation in the NRC’s regulations for admissibility of contentions or in NEPA.

NRC’s admissibility standards in 10 C.F.R. § 2.309(f)(1) require that a contention must be stated with “particularity.” Petitioners met that requirement by stating the particular issues – the recommendations of the Task Force – that must be addressed in a supplemental SEIS for Vogtle 3 & 4. Nothing in 10 C.F.R. § 2.309(f)(1) required them to also show that the supplement of the Vogtle SEIS would lead to some result uniquely different from supplementation of EISs for other reactors.

Similarly, NEPA – the statute on which Petitioners’ contention is based – contains no requirement that the environmental issues addressed in an EIS be

unique. NEPA simply requires that before taking a major federal action that may have an effect on the environment, the NRC must discuss its environmental impacts and weigh the costs and benefits of alternatives to mitigate those impacts. *See* 42 U.S.C. § 4332(c).

### **CONCLUSION**

For the reasons stated above, the Court should vacate the Commission's decisions with respect to the licensing of the Vogtle COLs and the certification of the AP1000 design and remand this case to the NRC for further proceedings consistent with NEPA.

Respectfully submitted,

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May 11, 2012

## **CERTIFICATE OF COMPLIANCE**

Pursuant to Federal Rule of Appellate Procedure Rule 32(a)(7)(C) and Circuit Rule 32(a)(2)(C), I certify that the attached Corrected Final Opening Brief is proportionately spaced, has a typeface of Times New Roman, 14 points, and contains less than 12,555 words. This figure includes footnotes and citations, but excludes the Cover Page, Table of Contents, Table of Authorities, Certificate of Compliance, Certificate of Service, Addendum of Statutes, Rules and Regulations, and Standing Addendum. I have relied on Microsoft Word's calculation feature for this calculation.

*/s/ Diane Curran*

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August 21, 2012

## **CERTIFICATE OF SERVICE**

I certify that on August 21, 2012, I served the foregoing Petitioners' Corrected Final Opening Brief on the following individuals by electronic service:

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# **STANDING ADDENDUM**

## **Standing Addendum**

This addendum includes declarations that Environmental Petitioners have offered in support of their standing to pursue this action. The list of exhibits is as follows:

Exhibit 1: Declaration of Charles N. Utley	STANDING ADD 4
Exhibit 2: Declaration of Carey K. Barber	STANDING ADD 7
Exhibit 3: Declaration of Shirley Coleman	STANDING ADD 10
Exhibit 4: Declaration of Stephen N. Willis	STANDING ADD 13
Exhibit 5: Declaration of Barry J. White	STANDING ADD 16
Exhibit 6: Declaration of Philip K. Stoddard	STANDING ADD 19
Exhibit 7: Declaration of Tom Clements	STANDING ADD 22
Exhibit 8: Declaration of Annie L. H. Stephens	STANDING ADD 25
Exhibit 9: Declaration of Lillie Bell Wilson	STANDING ADD 28
Exhibit 10: Declaration of Marianne Carruth	STANDING ADD 31
Exhibit 11: Declaration of William Ames Fisk	STANDING ADD 34
Exhibit 12: Declaration of Emily Casey	STANDING ADD 37



Exhibit 13: Declaration of Harry Phillips STANDING ADD 40

Exhibit 14: Declaration of Alice M. Loyd STANDING ADD 43

Exhibit 15: Declaration of Jaye Bennett STANDING ADD 46

Exhibit 16: Declaration of Susan Bloomfield STANDING ADD 49

Exhibit 17: Declaration of William J. Mareska STANDING ADD 52

## **ADDENDUM EXHIBIT 1**

Declaration of Charles N. Utley

UNITED STATES COURT OF APPEALS  
DISTRICT OF COLUMBIA CIRCUIT

-----X  
BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

v.

No. 12-1151

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.  
-----X

BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

v.

No. 12-1106  
(NRC-76FR82079)

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.  
-----X

**DECLARATION OF Charles N. Utley**

Under penalty of perjury,       I       declares as follows:

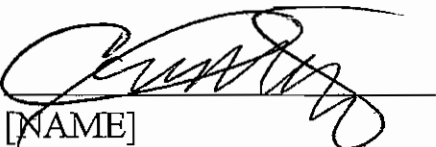
1. My name is Charles N. Utley. I am a member of Blue Ridge Environmental Defense League. “( BREDL)”

2. I live at 3417 Sutton Place, Augusta, GA 30906. My home lies within 50 miles of the Plant Vogtle site in Burke County, Georgia, for which Southern Nuclear Operating Company, Inc. has received a Combined License ("COL") for the construction and operation of two new nuclear reactors. The new Vogtle reactors will be built to the AP1000 standardized design that has been recently amended and certified by the NRC.

3. Based on historical experience with nuclear reactors to date, I believe that these facilities are inherently dangerous. Therefore, construction of one or more new nuclear reactors so close to my home could pose a grave risk to my health and safety and the integrity of the natural environment where I live. In particular, I am concerned that if an accident involving atmospheric release of radiological material were to occur, I could be killed or become very ill and that the environment around me could become contaminated and unlivable.

4. I believe that the Environmental Impact Statement for the new Vogtle reactors did not adequately consider the safety and environmental risks posed by the reactors or weigh an adequate range of alternatives for mitigating or avoiding those risks.

5. Therefore, I have authorized BREDL to represent my interests in this lawsuit by appealing the Vogtle COL and the NRC's approval of the amended AP1000 design.

  
[NAME]

March 19, 2012

## **ADDENDUM EXHIBIT 2**

Declaration of Carey K. Barber

UNITED STATES COURT OF APPEALS  
DISTRICT OF COLUMBIA CIRCUIT

-----X  
BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

v.

No. 12-1151

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.  
-----X

BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

v.

No. 12-1106  
(NRC-76FR82079)

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.  
-----X

DECLARATION OF Carey K. Barber

Under penalty of perjury, I declares as follows:

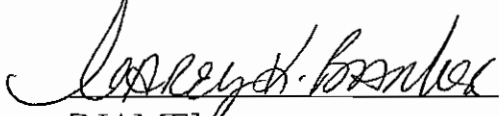
1. My name is Carey K. Barber. I am a member of Blue Ridge Environmental Defense League. "(BREDL)"

2. I live at 2489 Teakwood Dr Hepha 30815. My home lies within 50 miles of the Plant Vogtle site in Burke County, Georgia, for which Southern Nuclear Operating Company, Inc. has received a Combined License ("COL") for the construction and operation of two new nuclear reactors. The new Vogtle reactors will be built to the AP1000 standardized design that has been recently amended and certified by the NRC.

3. Based on historical experience with nuclear reactors to date, I believe that these facilities are inherently dangerous. Therefore, construction of one or more new nuclear reactors so close to my home could pose a grave risk to my health and safety and the integrity of the natural environment where I live. In particular, I am concerned that if an accident involving atmospheric release of radiological material were to occur, I could be killed or become very ill and that the environment around me could become contaminated and unlivable.

4. I believe that the Environmental Impact Statement for the new Vogtle reactors did not adequately consider the safety and environmental risks posed by the reactors or weigh an adequate range of alternatives for mitigating or avoiding those risks.

5. Therefore, I have authorized BREDL to represent my interests in this lawsuit by appealing the Vogtle COL and the NRC's approval of the amended AP1000 design.

  
[NAME]

March 19, 2012

### **ADDENDUM EXHIBIT 3**

Declaration of Shirley Coleman



UNITED STATES COURT OF APPEALS  
DISTRICT OF COLUMBIA CIRCUIT

-----X  
BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

v.

No. 12-1151

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.  
-----X

BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

v.

No. 12-1106  
(NRC-76FR82079)

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.  
-----X

DECLARATION OF

Shirley Coleman

Under penalty of perjury, I declares as follows:

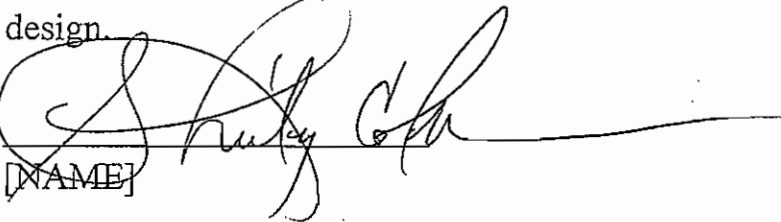
1. My name is Shirley Coleman. I am a member of Blue Ridge  
Environmental Defense League. "(BREDL)"

2. I live at 4352 Creekview Dr. Heph. Ga.. My home lies within 50 miles of the Plant Vogtle site in Burke County, Georgia, for which Southern Nuclear Operating Company, Inc. has received a Combined License ("COL") for the construction and operation of two new nuclear reactors. The new Vogtle reactors will be built to the AP1000 standardized design that has been recently amended and certified by the NRC.

3. Based on historical experience with nuclear reactors to date, I believe that these facilities are inherently dangerous. Therefore, construction of one or more new nuclear reactors so close to my home could pose a grave risk to my health and safety and the integrity of the natural environment where I live. In particular, I am concerned that if an accident involving atmospheric release of radiological material were to occur, I could be killed or become very ill and that the environment around me could become contaminated and unlivable.

4. I believe that the Environmental Impact Statement for the new Vogtle reactors did not adequately consider the safety and environmental risks posed by the reactors or weigh an adequate range of alternatives for mitigating or avoiding those risks.

5. Therefore, I have authorized BREDL to represent my interests in this lawsuit by appealing the Vogtle COL and the NRC's approval of the amended AP1000 design.

  
[NAME]

March 19, 2012

## **ADDENDUM EXHIBIT 4**

Declaration of Stephen N. Willis

**UNITED STATES COURT OF APPEALS  
DISTRICT OF COLUMBIA CIRCUIT**

-----X

BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

No. 12-1151

v.

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.

-----X

BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

No. 12-1106  
(NRC-76FR82079)

v.

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.

-----X

**DECLARATION OF Stephen N. Willis**

Under penalty of perjury, Stephen N. Willis declares as follows:

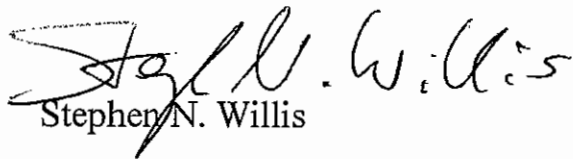
1. My name is Stephen N. Willis. I am a member of the Center for a Sustainable Coast.

2. I live at 801 East Victory Drive, Savannah, Georgia 31405. My home lies within 120 miles of the Plant Vogtle site in Burke County, Georgia, for which Southern Nuclear Operating Company, Inc. has received a Combined License ("COL") for the construction and operation of two new nuclear reactors. The new Vogtle reactors will be built to the AP1000 standardized design that has been recently amended and certified by the NRC.

3. Based on historical experience with nuclear reactors to date, I believe that these facilities are inherently dangerous. Therefore, construction of one or more new nuclear reactors so close to my home could pose a grave risk to my health and safety and the integrity of the natural environment where I live. In particular, I am concerned that if an accident involving atmospheric release of radiological material were to occur, I could be killed or become very ill and that the environment around me could become contaminated and unlivable.

4. I believe that the Environmental Impact Statement for the new Vogtle reactors did not adequately consider the safety and environmental risks posed by the reactors or weigh an adequate range of alternatives for mitigating or avoiding those risks.

5. Therefore, I have authorized the Center for a Sustainable Coast to represent my interests in this lawsuit by appealing the Vogtle COL and the NRC's approval of the amended AP1000 design.

  
Stephen N. Willis

March 18, 2012

## **ADDENDUM EXHIBIT 5**

Declaration of Barry J. White

**UNITED STATES COURT OF APPEALS  
DISTRICT OF COLUMBIA CIRCUIT**

-----X

BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

v.

No. 12-1151

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.

-----X

BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

v.

No. 12-1106  
(NRC-76FR82079)

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.

-----X

**DECLARATION OF: Barry J. White**

Under penalty of perjury, Barry J. White declares as follows:

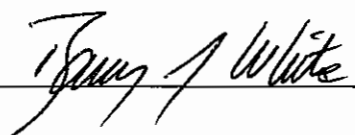
1. My name is Barry J. White. I am a member of the Citizens Allied for Safe Energy, Inc. (CASE).

2. I live at 10001 SW 129 Terrace, Miami, Florida, 33176-5606. My home lies within 18 miles of the Turkey Point Nuclear Plant site in Homestead, Florida for which Florida Power and Light Company, Inc. has proposed two new nuclear reactors and has applied for a Combined License ("COL"). The new Westinghouse reactors will be built to the AP1000 standardized design that has been recently amended and certified by the NRC.

3. Based on historical experience with nuclear reactors to date, I believe that these facilities are inherently dangerous. Therefore, construction of one or more new nuclear reactors so close to my home could pose a grave risk to my health and safety and the integrity of the natural environment where I live. In particular, I am concerned that if an accident involving atmospheric release of radiological material were to occur, I could be killed or become very ill and that the environment around me could become contaminated and unlivable.

4. I believe that the Environmental Impact Statement for the AP1000 reactors did not adequately consider the safety and environmental risks posed by the reactors or weigh an adequate range of alternatives for mitigating or avoiding those risks.

5. Therefore, I have authorized CASE to represent my interests in this lawsuit by appealing the NRC's approval of the amended AP1000 design.

Signed: 

March 20, 2012



## **ADDENDUM EXHIBIT 6**

Declaration of Philip K. Stoddard

**UNITED STATES COURT OF APPEALS  
DISTRICT OF COLUMBIA CIRCUIT**

-----X  
BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

v.

No. 12-1151

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.

-----X  
BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

v.

No. 12-1106  
(NRC-76FR82079)

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.

-----X  
**DECLARATION OF: Philip K Stoddard**

Under penalty of perjury, Philip K. Stoddard declares as follows:

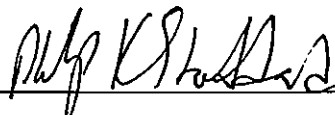
1. My name is Philip K. Stoddard. I am a member of the Citizens Allied for Safe Energy, Inc. (CASE).

2. I live at 6820 SW 64 Court, South Miami FL 33143-3209. My home lies within 20 miles of the Turkey Point Nuclear Plant site in Homestead, Florida for which Florida Power and Light Company, Inc. has proposed two new nuclear reactors and has applied for a Combined License ("COL"). The new Westinghouse reactors will be built to the AP1000 standardized design that has been recently amended and certified by the NRC.

3. Based on historical experience with nuclear reactors to date, I believe that these facilities are inherently dangerous. Therefore, construction of one or more new nuclear reactors so close to my home could pose a grave risk to my health and safety and the integrity of the natural environment where I live. In particular, I am concerned that if an accident involving atmospheric release of radiological material were to occur, I could be killed or become very ill and that the environment around me could become contaminated and unlivable.

4. I believe that the Environmental Impact Statement for the AP1000 reactors did not adequately consider the safety and environmental risks posed by the reactors or weigh an adequate range of alternatives for mitigating or avoiding those risks.

5. Therefore, I have authorized CASE to represent my interests in this lawsuit by appealing the NRC's approval of the amended AP1000 design.

Signed: 

March 20, 2012

## **ADDENDUM EXHIBIT 7**

Declaration of Tom Clements

**UNITED STATES COURT OF APPEALS  
DISTRICT OF COLUMBIA CIRCUIT**

-----X

BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

v.

No. 12-1151

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.

-----X

BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

v.

No. 12-1106  
(NRC-76FR82079)

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.

-----X

**DECLARATION OF TOM CLEMENTS**

Under penalty of perjury, Tom Clements declares as follows:

1. My name is Tom Clements. I am a member of Friends of the Earth ("FoE").
2. I live at 1112 Florence Street, Columbia, SC 29201. My home lies within 30 miles of the Virgil C. Summer Nuclear Station ("Summer") site in Jenkinsville, South Carolina, for which South Carolina Electric & Gas Company has proposed two new nuclear reactors and has applied for a Combined License ("COL"). The

new Summer reactors will be built to the AP1000 standardized design that has been recently amended and certified by the NRC.

3. Based on historical experience with nuclear reactors to date, I believe that these facilities are inherently dangerous. Therefore, construction of one or more new nuclear reactors so close to my home could pose a grave risk to my health and safety and the integrity of the natural environment where I live. In particular, I am concerned that if an accident involving atmospheric release of radiological material were to occur, I could be killed or become very ill and that the environment around me could become contaminated and unlivable.

4. I believe that the Environmental Impact Statement for the AP1000 reactors did not adequately consider the safety and environmental risks posed by the reactors or weigh an adequate range of alternatives for mitigating or avoiding those risks.

5. Therefore, I have authorized Friends of the Earth to represent my interests in this lawsuit by appealing the NRC's approval of the amended AP1000 design.



Tom Clements

March 22, 2012

## **ADDENDUM EXHIBIT 8**

Declaration of Annie L. H. Stephens

**UNITED STATES COURT OF APPEALS  
DISTRICT OF COLUMBIA CIRCUIT**

-----X

BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

No. 12-1151

v.

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.

-----X

BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

No. 12-1106  
(NRC-76FR82079)

v.

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.

-----X

**DECLARATION OF ANNIE LAURA HOWARD STEPHENS**

Under penalty of perjury, Annie Laura Howard Stephens declares as follows:

1. My name is Annie Laura Howard Stephens. I am a member of Georgia Women's Action for New Directions ("Georgia WAND").



2. I live at 906 Cates Mead Road, Waynesboro, Georgia. My home lies within seven miles of the Plant Vogtle site in Burke County, Georgia, for which Southern Nuclear Operating Company, Inc. has received a Combined License ("COL") for the construction and operation of two new nuclear reactors. The new Vogtle reactors will be built to the AP1000 standardized design that has been recently amended and certified by the NRC.

3. Based on historical experience with nuclear reactors to date, I believe that these facilities are inherently dangerous. Therefore, construction of one or more new nuclear reactors so close to my home could pose a grave risk to my health and safety and the integrity of the natural environment where I live. In particular, I am concerned that if an accident involving atmospheric release of radiological material were to occur, I could be killed or become very ill and that the environment around me could become contaminated and unlivable.

4. I believe that the Environmental Impact Statement for the new Vogtle reactors did not adequately consider the safety and environmental risks posed by the reactors or weigh an adequate range of alternatives for mitigating or avoiding those risks.

5. Therefore, I have authorized Georgia WAND to represent my interests in this lawsuit by appealing the Vogtle COL and the NRC's approval of the amended AP1000 design.

A handwritten signature in cursive script that reads "Annie Laura Howard Stephens".

Annie Laura Howard Stephens

March 21, 2012

## **ADDENDUM EXHIBIT 9**

Declaration of Lillie Bell Wilson

**UNITED STATES COURT OF APPEALS  
DISTRICT OF COLUMBIA CIRCUIT**

-----X  
BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

No. 12-1151

v.

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.  
-----X

BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

No. 12-1106  
(NRC-76FR82079)

v.

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.  
-----X

**DECLARATION OF LILLIE BELL WILSON**

Under penalty of perjury, Lillie Bell Wilson declares as follows:

1. My name is Lillie Bell Wilson. I am a member of Georgia Women's Action for New Directions ("Georgia WAND").

2. I live at 906 Cates Mead Road, Waynesboro, Georgia. My home lies within 25 miles of the Plant Vogtle site in Burke County, Georgia, for which Southern Nuclear Operating Company, Inc. has received a Combined License ("COL") for the construction and operation of two new nuclear reactors. The new Vogtle reactors will be built to the AP1000 standardized design that has been recently amended and certified by the NRC.

3. Based on historical experience with nuclear reactors to date, I believe that these facilities are inherently dangerous. Therefore, construction of one or more new nuclear reactors so close to my home could pose a grave risk to my health and safety and the integrity of the natural environment where I live. In particular, I am concerned that if an accident involving atmospheric release of radiological material were to occur, I could be killed or become very ill and that the environment around me could become contaminated and unlivable.

4. I believe that the Environmental Impact Statement for the new Vogtle reactors did not adequately consider the safety and environmental risks posed by the reactors or weigh an adequate range of alternatives for mitigating or avoiding those risks.

5. Therefore, I have authorized Georgia WAND to represent my interests in this lawsuit by appealing the Vogtle COL and the NRC's approval of the amended AP1000 design.

A handwritten signature in cursive script that reads "Lillie Bell Wilson".

Lillie Bell Wilson

March 21, 2012

## **ADDENDUM EXHIBIT 10**

Declaration of Marianne Carruth

UNITED STATES COURT OF APPEALS  
DISTRICT OF COLUMBIA CIRCUIT

-----X  
BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

No. 12-1151

v.

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.  
-----X

BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

No. 12-1106  
(NRC-76FR82079)

v.

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.  
-----X

DECLARATION OF Marianne Carnuth

Under penalty of perjury, Marianne Carnuth declares as follows:

1. My name is Marianne Carnuth. I am a member of Nuclear  
Information and Resource Service (NIRS).

2. I live at 3493 Hwy 176 W. <sup>Troy, NC 28782</sup> My home lies within 50 miles of the proposed William States Lee (Lee) reactor site near Gaffney South Carolina where Duke Energy has proposed two new nuclear reactors and has applied for a Combined License ("COL"). The new Lee reactors will be built to the AP1000 standardized design that has been recently amended and certified by the NRC.

3. Based on historical experience with nuclear reactors to date, I believe that these facilities are inherently dangerous. Therefore, construction of one or more new nuclear reactors so close to my home could pose a grave risk to my health and safety and the integrity of the natural environment where I live. In particular, I am concerned that if an accident involving atmospheric release of radiological material were to occur, I could be killed or become very ill and that the environment around me could become contaminated and unlivable.

4. I believe that the Environmental Impact Statement for the AP1000 reactors did not adequately consider the safety and environmental risks posed by the reactors or weigh an adequate range of alternatives for mitigating or avoiding those risks.

5. Therefore, I have authorized NIRS to represent my interests in this lawsuit by appealing the NRC's approval of the amended AP1000 design.

Signed: Marianne Conner

March 22, 2012

## **ADDENDUM EXHIBIT 11**

Declaration of William Ames Fisk



**UNITED STATES COURT OF APPEALS  
DISTRICT OF COLUMBIA CIRCUIT**

-----X  
BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

v.

No. 12-1151  
(NRC-CLI-12-02)

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.  
-----X

BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

v.

No. 12-1106  
(NRC-76FR82079)

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.  
-----X

**DECLARATION OF WILLIAM AMES FISK**

Under penalty of perjury, William Ames Fisk declares as follows:

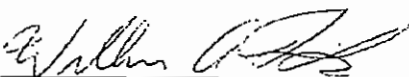
1. My name is William Ames Fisk. I am a member of Nuclear Information and Resource Service (NIRS).

2. I live at 125 Chimney Glen Dr. Hendersonville, NC 28739\_. My home lies within 50 miles of the proposed William States Lee (Lee) reactor site near Gaffney South Carolina where Duke Energy has proposed two new nuclear reactors and has applied for a Combined License ("COL"). The new Lee reactors will be built to the AP1000 standardized design that has been recently amended and certified by the NRC.

3. Based on historical experience with nuclear reactors to date, I believe that these facilities are inherently dangerous. Therefore, construction of one or more new nuclear reactors so close to my home could pose a grave risk to my health and safety and the integrity of the natural environment where I live. In particular, I am concerned that if an accident involving atmospheric release of radiological material were to occur, I could be killed or become very ill and that the environment around me could become contaminated and unlivable.

4. I believe that the Environmental Impact Statement for the AP1000 reactors did not adequately consider the safety and environmental risks posed by the reactors or weigh an adequate range of alternatives for mitigating or avoiding those risks.

5. Therefore, I have authorized NIRS to represent my interests in this lawsuit by appealing the NRC's approval of the amended AP1000 design.

Signed: 

March 22, 2012

## **ADDENDUM EXHIBIT 12**

Declaration of Emily Casey

**UNITED STATES COURT OF APPEALS  
DISTRICT OF COLUMBIA CIRCUIT**

-----X  
BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

No. 12-1151

v.

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.  
-----X

BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

No. 12-1106  
(NRC-76FR82079)

v.

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.  
-----X

**DECLARATION OF Emily Casey**

Under penalty of perjury, Emily Casey declares as follows:

1. My name is Emily Casey. I am a member of Nuclear Information and Resource Service (NIRS).

2. I live at \_1430 E. Hartford St. My home lies within \_30\_ miles of the proposed Levy County 1 and 2 in Levy County, Florida, for which Progress Energy has proposed two new nuclear reactors and has applied for a Combined License ("COL"). The new Levy County 1 & 2 reactors will be built to the AP1000 standardized design that has been recently amended and certified by the NRC.

3. Based on historical experience with nuclear reactors to date, I believe that these facilities are inherently dangerous. Therefore, construction of one or more new nuclear reactors so close to my home could pose a grave risk to my health and safety and the integrity of the natural environment where I live. In particular, I am concerned that if an accident involving atmospheric release of radiological material were to occur, I could be killed or become very ill and that the environment around me could become contaminated and unlivable.

4. I believe that the Environmental Impact Statement for the AP1000 reactors did not adequately consider the safety and environmental risks posed by the reactors or weigh an adequate range of alternatives for mitigating or avoiding those risks.

5. Therefore, I have authorized NIRS to represent my interests in this lawsuit by appealing the NRC's approval of the amended AP1000 design.

Signed: 

March 22, 2012

## **ADDENDUM EXHIBIT 13**

Declaration of Harry Phillips

UNITED STATES COURT OF APPEALS  
DISTRICT OF COLUMBIA CIRCUIT

-----X  
BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

No. 12-1151

v.

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.  
-----X

BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

No. 12-1106  
(NRC-76FR82079)

v.

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.  
-----X

DECLARATION OF Harry Phillips

Under penalty of perjury, Harry Phillips declares as follows:

1. My name is Harry Phillips. I am a member of the North Carolina Waste Awareness and Reduction Network ("NC WARN").

2. I live at 1121 Arbogate Circle, Chapel Hill, NC. My home lies within 30 miles of the Shearon Harris Nuclear Plant site in Wake County, North Carolina, for which Progress Energy has proposed two new nuclear reactors and has applied for a Combined License ("COL"). The new Shearon Harris reactors will be built to the AP1000 standardized design that has been recently amended and certified by the NRC.

3. Based on historical experience with nuclear reactors to date, I believe that these facilities are inherently dangerous. Therefore, construction of one or more new nuclear reactors so close to my home could pose a grave risk to my health and safety and the integrity of the natural environment where I live. In particular, I am concerned that if an accident involving atmospheric release of radiological material were to occur, I could be killed or become very ill and that the environment around me could become contaminated and unlivable.

4. I believe that the Environmental Impact Statement for the AP1000 reactors did not adequately consider the safety and environmental risks posed by the reactors or weigh an adequate range of alternatives for mitigating or avoiding those risks.

5. Therefore, I have authorized NC WARN to represent my interests in this lawsuit by appealing the NRC's approval of the amended AP1000 design.

Signed: \_\_\_\_\_



March 19, 2012



## **ADDENDUM EXHIBIT 14**

Declaration of Alice M. Loyd

UNITED STATES COURT OF APPEALS  
DISTRICT OF COLUMBIA CIRCUIT

-----X  
BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

No. 12-1151

v.

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.  
-----X

BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

No. 12-1106  
(NRC-76FR82079)

v.

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.  
-----X

DECLARATION OF

Alice M. Loyd

Under penalty of perjury, Alice Loyd declares as follows:

1. My name is Alice M. Loyd I am a member of the North Carolina Waste Awareness and Reduction Network ("NC WARN").

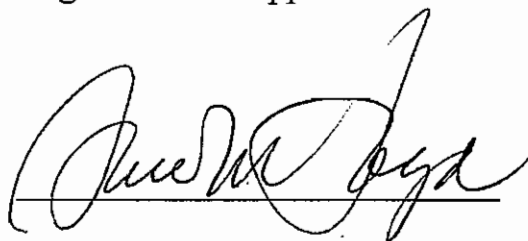
2. I live at 800 Northcliff Dr Raleigh NC My home lies within 30 miles of the Shearon Harris Nuclear Plant site in Wake County, North Carolina, for which Progress Energy has proposed two new nuclear reactors and has applied for a Combined License ("COL"). The new Shearon Harris reactors will be built to the AP1000 standardized design that has been recently amended and certified by the NRC.

3. Based on historical experience with nuclear reactors to date, I believe that these facilities are inherently dangerous. Therefore, construction of one or more new nuclear reactors so close to my home could pose a grave risk to my health and safety and the integrity of the natural environment where I live. In particular, I am concerned that if an accident involving atmospheric release of radiological material were to occur, I could be killed or become very ill and that the environment around me could become contaminated and unlivable.

4. I believe that the Environmental Impact Statement for the AP1000 reactors did not adequately consider the safety and environmental risks posed by the reactors or weigh an adequate range of alternatives for mitigating or avoiding those risks.

5. Therefore, I have authorized NC WARN to represent my interests in this lawsuit by appealing the NRC's approval of the amended AP1000 design.

Signed:



March 19, 2012

## **ADDENDUM EXHIBIT 15**

Declaration of Jaye Bennett

**UNITED STATES COURT OF APPEALS  
DISTRICT OF COLUMBIA CIRCUIT**

-----X

BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

No. 12-1151

v.

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.

-----X

BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

No. 12-1106  
(NRC-76FR82079)

v.

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.

-----X

**DECLARATION OF JAYE BENNETT**

Under penalty of perjury, Jaye Bennett declares as follows:

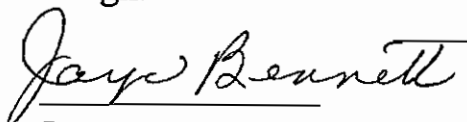
1. My name is Jaye Bennett. I am a member of Nuclear Watch South ("NWS").
2. I live at 9406 Highway 242 in Riddleville, Georgia. My home lies within 50

miles of the Plant Vogtle site in Burke County, Georgia, for which Southern Nuclear Operating Company, Inc. has received a Combined License ("COL") for the construction and operation of two new nuclear reactors. The new Vogtle reactors will be built to the AP1000 standardized design that has been recently amended and certified by the NRC.

3. Based on historical experience with nuclear reactors to date, I believe that these facilities are inherently dangerous. Therefore, construction of one or more new nuclear reactors so close to my home could pose a grave risk to my health and safety and the integrity of the natural environment where I live. In particular, I am concerned that if an accident involving atmospheric release of radiological material were to occur, I could be killed or become very ill and that the environment around me could become contaminated and unlivable.

4. I believe that the Environmental Impact Statement for the new Vogtle reactors did not adequately consider the safety and environmental risks posed by the reactors or weigh an adequate range of alternatives for mitigating or avoiding those risks.

5. Therefore, I have authorized NWS to represent my interests in this lawsuit by appealing the Vogtle COL and the NRC's approval of the amended AP1000 design.

A handwritten signature in cursive script that reads "Jaye Bennett". The signature is written in dark ink and is positioned above the printed name.

Jaye Bennett

March 19, 2012

**ADDENDUM EXHIBIT 16**

Declaration of Susan Bloomfield

**UNITED STATES COURT OF APPEALS  
DISTRICT OF COLUMBIA CIRCUIT**

-----X

BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

No. 12-1151

v.

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.

-----X

BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

No. 12-1106  
(NRC-76FR82079)

v.

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.

-----X

**DECLARATION OF SUSAN BLOOMFIELD**

Under penalty of perjury, Susan Bloomfield, declares as follows:

1. My name is Susan Bloomfield. I am a member of Southern Alliance for Clean Energy ("SACE").

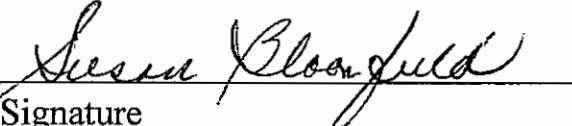


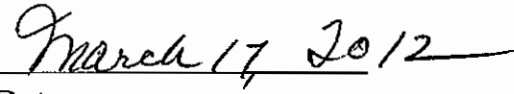
2. I live at 14 Raintree Place, Augusta, Ga 30309. My home lies within 35-36 miles of the Plant Vogtle site in Burke County, Georgia, for which Southern Nuclear Operating Company, Inc. has received a Combined License ("COL") for the construction and operation of two new nuclear reactors. The new Vogtle reactors will be built to the AP1000 standardized design that has been recently amended and certified by the NRC.

3. Based on historical experience with nuclear reactors to date, I believe that these facilities are inherently dangerous. Therefore, construction of one or more new nuclear reactors so close to my home could pose a grave risk to my health and safety and the integrity of the natural environment where I live. In particular, I am concerned that if an accident involving atmospheric release of radiological material were to occur, I could be killed or become very ill and that the environment around me could become contaminated and unlivable.

4. I believe that the Environmental Impact Statement for the new Vogtle reactors did not adequately consider the safety and environmental risks posed by the reactors or weigh an adequate range of alternatives for mitigating or avoiding those risks.

5. Therefore, I have authorized SACE to represent my interests in this lawsuit by appealing the Vogtle COL and the NRC's approval of the amended AP1000 design.

  
Signature

  
Date

## **ADDENDUM EXHIBIT 17**

Declaration of William J. Mareska

**UNITED STATES COURT OF APPEALS  
DISTRICT OF COLUMBIA CIRCUIT**

-----X

BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

No. 12-1151

v.

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.

-----X

BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE, et al.

Petitioners

No. 12-1106  
(NRC-76FR82079)

v.

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents.

-----X

**DECLARATION OF WILLIAM J. MARESKA**

Under penalty of perjury, William J. Mareska, declares as follows:

1. My name is William J. Mareska. I am a member of Southern Alliance for Clean Energy ("SACE").

2. I live at 14 Raintree Place, Augusta, Ga 30309. My home lies within 35-36 miles of the Plant Vogtle site in Burke County, Georgia, for which Southern Nuclear Operating Company, Inc. has received a Combined License ("COL") for the construction and operation of two new nuclear reactors. The new Vogtle reactors will be built to the AP1000 standardized design that has been recently amended and certified by the NRC.

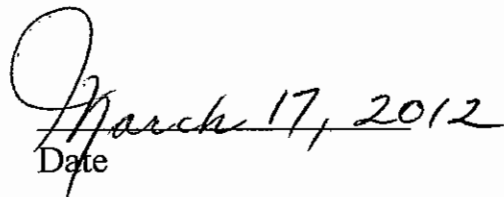
3. I own a business and work at 3802 Washington Road, Martinez, GA 30307. My business lies with in 36 to 37 miles of the Plant Vogtle site in Burke County, GA.

4. Based on historical experience with nuclear reactors to date, I believe that these facilities are inherently dangerous. Therefore, construction of one or more new nuclear reactors so close to my home could pose a grave risk to my health and safety and the integrity of the natural environment where I live. In particular, I am concerned that if an accident involving atmospheric release of radiological material were to occur, I could be killed or become very ill and that the environment around me could become contaminated and unlivable.

5. I believe that the Environmental Impact Statement for the new Vogtle reactors did not adequately consider the safety and environmental risks posed by the reactors or weigh an adequate range of alternatives for mitigating or avoiding those risks.

6. Therefore, I have authorized SACE to represent my interests in this lawsuit by appealing the Vogtle COL and the NRC's approval of the amended AP1000 design.

  
Signature

  
Date

## **ADDENDUM OF STATUTES, RULES AND REGULATIONS**

### **I. STATUTES**

5 U.S.C. § 702.....	ADD 3
5 U.S.C. § 706.....	ADD 7
28 U.S.C. § 2342.....	ADD 11
28 U.S.C. § 2344.....	ADD 15
Atomic Energy Act 42 U.S.C. § 2133.....	ADD 19
Atomic Energy Act 42 U.S.C. § 2235.....	ADD 23
Atomic Energy Act 42 U.S.C. § 2239.....	ADD 27
National Environmental Policy Act 42 U.S.C. § 4332.....	ADD 33

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10 C.F.R. § 2.309.....	ADD 39
10 C.F.R. § 2.325.....	ADD 45
10 C.F.R. § 51.30.....	ADD 49
10 C.F.R. § 51.31.....	ADD 53
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10 C.F.R. § 51.75.....	ADD 61
10 C.F.R. § 51.92.....	ADD 65
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10 C.F.R. § 52.17.....	ADD 73
10 C.F.R. § 52.18.....	ADD 79
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10 C.F.R. § 52.54.....	ADD 91
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10 C.F.R. § 52.79.....	ADD 99
10 C.F.R. § 52.83.....	ADD 109
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40 C.F.R. § 1502.22.....	ADD 117
40 C.F.R. § 1506.6.....	ADD 121

### **III. FEDERAL REGISTER NOTICES**

AP1000 Design Certification	
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Amendment to Licensing Process (Excerpt)	
72 Fed. Reg. 49352, 49426.....	ADD 147
Notice of Hearing for Vogtle 3&4 COL	
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AP1000 Design Certification Amendment – Proposed Rule	
76 Fed. Reg. 10269-01.....	ADD 159
Mandatory Hearing for Vogtle 3&4	
76 Fed. Reg. 50767-02.....	ADD 181
AP1000 Design Certification Amendment – Final Rule (Excerpt)	
76 Fed. Reg. 82079, 82081 and 82102-3.....	ADD 187
Issuance of Vogtle 3 & 4 COLs	
77 Fed. Reg. 12322-02.....	ADD 193

## **5 U.S.C. § 702**





**Effective:[See Text Amendments]**

United States Code Annotated [Currentness](#)

Title 5. Government Organization and Employees ([Refs & Annos](#))

▢ [Part I. The Agencies Generally](#)

▢ [Chapter 7. Judicial Review](#) ([Refs & Annos](#))

→→ **§ 702. Right of review**

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: *Provided*, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.



## **5 U.S.C. § 706**



**Effective:[See Text Amendments]**

United States Code Annotated [Currentness](#)

Title 5. Government Organization and Employees ([Refs & Annos](#))

▢ [Part I.](#) The Agencies Generally

▢ [Chapter 7.](#) Judicial Review ([Refs & Annos](#))

→→ **§ 706. Scope of review**

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall--

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be--
  - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
  - (B) contrary to constitutional right, power, privilege, or immunity;
  - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
  - (D) without observance of procedure required by law;
  - (E) unsupported by substantial evidence in a case subject to [sections 556](#) and [557](#) of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
  - (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.



## **28 U.S.C. § 2342**





**Effective: October 6, 2006**

United States Code Annotated [Currentness](#)

Title 28. Judiciary and Judicial Procedure ([Refs & Annos](#))

⌕ [Part VI](#). Particular Proceedings

⌕ [Chapter 158](#). Orders of Federal Agencies; Review ([Refs & Annos](#))

➡➡ **§ 2342. Jurisdiction of court of appeals**

The court of appeals (other than the United States Court of Appeals for the Federal Circuit) has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of--

- (1) all final orders of the Federal Communications Commission made reviewable by [section 402\(a\) of title 47](#);
- (2) all final orders of the Secretary of Agriculture made under chapters 9 and 20A of title 7, except orders issued under [sections 210\(e\), 217a](#), and [499g\(a\) of title 7](#);
- (3) all rules, regulations, or final orders of--
  - (A) the Secretary of Transportation issued pursuant to [section 50501, 50502, 56101-56104](#), or [57109 of title 46](#) or pursuant to part B or C of subtitle IV, subchapter III of chapter 311, chapter 313, or chapter 315 of title 49; and
  - (B) the Federal Maritime Commission issued pursuant to section 305, 41304, 41308, or 41309 or chapter 421 or 441 of title 46;
- (4) all final orders of the Atomic Energy Commission made reviewable by [section 2239 of title 42](#);
- (5) all rules, regulations, or final orders of the Surface Transportation Board made reviewable by [section 2321](#) of this title;
- (6) all final orders under section 812 of the Fair Housing Act; and
- (7) all final agency actions described in [section 20114\(c\) of title 49](#).

Jurisdiction is invoked by filing a petition as provided by [section 2344](#) of this title.



## **28 U.S.C. § 2344**



**Effective:[See Text Amendments]**

United States Code Annotated [Currentness](#)

Title 28. Judiciary and Judicial Procedure ([Refs & Annos](#))

▢ [Part VI](#). Particular Proceedings

▢ [Chapter 158](#). Orders of Federal Agencies; Review ([Refs & Annos](#))

➡➡ **§ 2344. Review of orders; time; notice; contents of petition; service**

On the entry of a final order reviewable under this chapter, the agency shall promptly give notice thereof by service or publication in accordance with its rules. Any party aggrieved by the final order may, within 60 days after its entry, file a petition to review the order in the court of appeals wherein venue lies. The action shall be against the United States. The petition shall contain a concise statement of--

- (1) the nature of the proceedings as to which review is sought;
- (2) the facts on which venue is based;
- (3) the grounds on which relief is sought; and
- (4) the relief prayed.

The petitioner shall attach to the petition, as exhibits, copies of the order, report, or decision of the agency. The clerk shall serve a true copy of the petition on the agency and on the Attorney General by registered mail, with request for a return receipt.



# **Atomic Energy Act**

**42 U.S.C. § 2133**





**Effective: August 8, 2005**

United States Code Annotated [Currentness](#)

Title 42. The Public Health and Welfare

Chapter 23. Development and Control of Atomic Energy ([Refs & Annos](#))

▢ [Division a.](#) Atomic Energy

▢ [Subchapter IX.](#) Atomic Energy Licenses ([Refs & Annos](#))

→→ **§ 2133. Commercial licenses**

(a) Conditions

The Commission is authorized to issue licenses to persons applying therefor to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export under the terms of an agreement for cooperation arranged pursuant to [section 2153](#) of this title, utilization or production facilities for industrial or commercial purposes. Such licenses shall be issued in accordance with the provisions of subchapter XV of this division and subject to such conditions as the Commission may by rule or regulation establish to effectuate the purposes and provisions of this chapter.

(b) Nonexclusive basis

The Commission shall issue such licenses on a nonexclusive basis to persons applying therefor (1) whose proposed activities will serve a useful purpose proportionate to the quantities of special nuclear material or source material to be utilized; (2) who are equipped to observe and who agree to observe such safety standards to protect health and to minimize danger to life or property as the Commission may by rule establish; and (3) who agree to make available to the Commission such technical information and data concerning activities under such licenses as the Commission may determine necessary to promote the common defense and security and to protect the health and safety of the public. All such information may be used by the Commission only for the purposes of the common defense and security and to protect the health and safety of the public.

(c) License period

Each such license shall be issued for a specified period, as determined by the Commission, depending on the type of activity to be licensed, but not exceeding forty years from the authorization to commence operations, and may be renewed upon the expiration of such period.

(d) Limitations

No license under this section may be given to any person for activities which are not under or within the jurisdiction of the United States, except for the export of production or utilization facilities under terms of an agreement for cooperation arranged pursuant to [section 2153](#) of this title, or except under the provisions of [section](#)

2139 of this title. No license may be issued to an alien or any any [FN1] corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

(f) [FN2] Accident notification condition; license revocation; license amendment to include condition

Each license issued for a utilization facility under this section or [section 2134\(b\)](#) of this title shall require as a condition thereof that in case of any accident which could result in an unplanned release of quantities of fission products in excess of allowable limits for normal operation established by the Commission, the licensee shall immediately so notify the Commission. Violation of the condition prescribed by this subsection may, in the Commission's discretion, constitute grounds for license revocation. In accordance with [section 2237](#) of this title, the Commission shall promptly amend each license for a utilization facility issued under this section or [section 2134\(b\)](#) of this title which is in effect on June 30, 1980, to include the provisions required under this subsection.

# **Atomic Energy Act**

**42 U.S.C. § 2235**



**Effective:[See Text Amendments]**United States Code Annotated [Currentness](#)

Title 42. The Public Health and Welfare

Chapter 23. Development and Control of Atomic Energy ([Refs & Annos](#))▢ [Division a.](#) Atomic Energy▢ [Subchapter XV.](#) Judicial Review and Administrative Procedure ([Refs & Annos](#))➡➡ **§ 2235. Construction permits and operating licenses****(a) Completion date**

All applicants for licenses to construct or modify production or utilization facilities shall, if the application is otherwise acceptable to the Commission, be initially granted a construction permit. The construction permit shall state the earliest and latest dates for the completion of the construction or modification. Unless the construction or modification of the facility is completed by the completion date, the construction permit shall expire, and all rights thereunder be forfeited, unless upon good cause shown, the Commission extends the completion date. Upon the completion of the construction or modification of the facility, upon the filing of any additional information needed to bring the original application up to date, and upon finding that the facility authorized has been constructed and will operate in conformity with the application as amended and in conformity with the provisions of this chapter and of the rules and regulations of the Commission, and in the absence of any good cause being shown to the Commission why the granting of a license would not be in accordance with the provisions of this chapter, the Commission shall thereupon issue a license to the applicant. For all other purposes of this chapter, a construction permit is deemed to be a “license”.

**(b) Hearings**

After holding a public hearing under [section 2239\(a\)\(1\)\(A\)](#) of this title, the Commission shall issue to the applicant a combined construction and operating license if the application contains sufficient information to support the issuance of a combined license and the Commission determines that there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of this chapter, and the Commission's rules and regulations. The Commission shall identify within the combined license the inspections, tests, and analyses, including those applicable to emergency planning, that the licensee shall perform, and the acceptance criteria that, if met, are necessary and sufficient to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of this chapter, and the Commission's rules and regulations. Following issuance of the combined license, the Commission shall ensure that the prescribed inspections, tests, and analyses are performed and, prior to operation of the facility, shall find that the prescribed acceptance criteria are met. Any finding made under this subsection shall not require a hearing except as provided in [section 2239\(a\)\(1\)\(B\)](#) of this title.



# **Atomic Energy Act**

**42 U.S.C. § 2239**





**Effective: April 26, 1996**

United States Code Annotated [Currentness](#)

Title 42. The Public Health and Welfare

Chapter 23. Development and Control of Atomic Energy ([Refs & Annos](#))

▢ [Division a.](#) Atomic Energy

▢ [Subchapter XV.](#) Judicial Review and Administrative Procedure ([Refs & Annos](#))

→→ **§ 2239. Hearings and judicial review**

**(a)(1)(A)** In any proceeding under this chapter, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees, and in any proceeding for the payment of compensation, an award or royalties under sections [\[FN1\]](#) 2183, 2187, 2236(c) or 2238 of this title, the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. The Commission shall hold a hearing after thirty days' notice and publication once in the Federal Register, on each application under [section 2133](#) or [2134\(b\)](#) of this title for a construction permit for a facility, and on any application under [section 2134\(c\)](#) of this title for a construction permit for a testing facility. In cases where such a construction permit has been issued following the holding of such a hearing, the Commission may, in the absence of a request therefor by any person whose interest may be affected, issue an operating license or an amendment to a construction permit or an amendment to an operating license without a hearing, but upon thirty days' notice and publication once in the Federal Register of its intent to do so. The Commission may dispense with such thirty days' notice and publication with respect to any application for an amendment to a construction permit or an amendment to an operating license upon a determination by the Commission that the amendment involves no significant hazards consideration.

**(B)(i)** Not less than 180 days before the date scheduled for initial loading of fuel into a plant by a licensee that has been issued a combined construction permit and operating license under [section 2235\(b\)](#) of this title, the Commission shall publish in the Federal Register notice of intended operation. That notice shall provide that any person whose interest may be affected by operation of the plant, may within 60 days request the Commission to hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria of the license.

**(ii)** A request for hearing under clause (i) shall show, prima facie, that one or more of the acceptance criteria in the combined license have not been, or will not be met, and the specific operational consequences of nonconformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety.

**(iii)** After receiving a request for a hearing under clause (i), the Commission expeditiously shall either deny or grant the request. If the request is granted, the Commission shall determine, after considering petitioners' prima

facie showing and any answers thereto, whether during a period of interim operation, there will be reasonable assurance of adequate protection of the public health and safety. If the Commission determines that there is such reasonable assurance, it shall allow operation during an interim period under the combined license.

**(iv)** The Commission, in its discretion, shall determine appropriate hearing procedures, whether informal or formal adjudicatory, for any hearing under clause (i), and shall state its reasons therefor.

**(v)** The Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within 180 days of the publication of the notice provided by clause (i) or the anticipated date for initial loading of fuel into the reactor, whichever is later. Commencement of operation under a combined license is not subject to subparagraph (A).

**(2)(A)** The Commission may issue and make immediately effective any amendment to an operating license or any amendment to a combined construction and operating license, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. Such amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. In determining under this section whether such amendment involves no significant hazards consideration, the Commission shall consult with the State in which the facility involved is located. In all other respects such amendment shall meet the requirements of this chapter.

**(B)** The Commission shall periodically (but not less frequently than once every thirty days) publish notice of any amendments issued, or proposed to be issued, as provided in subparagraph (A). Each such notice shall include all amendments issued, or proposed to be issued, since the date of publication of the last such periodic notice. Such notice shall, with respect to each amendment or proposed amendment (i) identify the facility involved; and (ii) provide a brief description of such amendment. Nothing in this subsection shall be construed to delay the effective date of any amendment.

**(C)** The Commission shall, during the ninety-day period following the effective date of this paragraph, promulgate regulations establishing (i) standards for determining whether any amendment to an operating license or any amendment to a combined construction and operating license involves no significant hazards consideration; (ii) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any such determination, which criteria shall take into account the exigency of the need for the amendment involved; and (iii) procedures for consultation on any such determination with the State in which the facility involved is located.

**(b)** The following Commission actions shall be subject to judicial review in the manner prescribed in chapter 158 of Title 28 and chapter 7 of Title 5:

**(1)** Any final order entered in any proceeding of the kind specified in subsection (a) of this section.

(2) Any final order allowing or prohibiting a facility to begin operating under a combined construction and operating license.

(3) Any final order establishing by regulation standards to govern the Department of Energy's gaseous diffusion uranium enrichment plants, including any such facilities leased to a corporation established under the USEC Privatization Act [[42 U.S.C.A. § 2297h et seq.](#)].

(4) Any final determination under [section 2297f\(c\)](#) of this title relating to whether the gaseous diffusion plants, including any such facilities leased to a corporation established under the USEC Privatization Act [[42 U.S.C.A. § 2297h et seq.](#)], are in compliance with the Commission's standards governing the gaseous diffusion plants and all applicable laws.



# **National Environmental Policy Act**

**42 U.S.C. § 4332**



**Effective:[See Text Amendments]**

United States Code Annotated [Currentness](#)

Title 42. The Public Health and Welfare

⌕ [Chapter 55. National Environmental Policy \(Refs & Annos\)](#)

⌕ [Subchapter I. Policies and Goals \(Refs & Annos\)](#)

**→→ § 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts**

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall--

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on--

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed

action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by [section 552 of Title 5](#), and shall accompany the proposal through the existing agency review processes;

**(D)** Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

**(i)** the State agency or official has statewide jurisdiction and has the responsibility for such action,

**(ii)** the responsible Federal official furnishes guidance and participates in such preparation,

**(iii)** the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

**(iv)** after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this chapter; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction. [\[FN1\]](#)

**(E)** study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

**(F)** recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

**(G)** make available to States, counties, municipalities, institutions, and individuals, advice and information



useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects;  
and

(I) assist the Council on Environmental Quality established by subchapter II of this chapter.



## **10 C.F.R. § 2.309**



\*\*\* This section is current through the July 26, 2012 \*\*\*  
\*\*\* issue of the Federal Register \*\*\*

TITLE 10 -- ENERGY  
CHAPTER I -- NUCLEAR REGULATORY COMMISSION  
PART 2 -- RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS  
AND ISSUANCE OF ORDERS

SUBPART C -- RULES OF GENERAL APPLICABILITY: HEARING REQUESTS, PETITIONS TO  
INTERVENE, AVAILABILITY OF DOCUMENTS, SELECTION OF SPECIFIC HEARING PROCEDURES,  
PRESIDING OFFICER POWERS, AND GENERAL HEARING MANAGEMENT FOR NRC ADJUDICATORY  
HEARINGS

*10 CFR 2.309*

§ 2.309 Hearing requests, petitions to intervene, requirements for standing, and contentions.

(a) General requirements. Any person whose interest may be affected by a proceeding and who desires to participate as a party must file a written request for hearing and a specification of the contentions which the person seeks to have litigated in the hearing. In a proceeding under *10 CFR 52.103*, the Commission, acting as the presiding officer, will grant the request if it determines that the requestor has standing under the provisions of paragraph (d) of this section and has proposed at least one admissible contention that meets the requirements of paragraph (f) of this section. For all other proceedings, except as provided in paragraph (e) of this section, the Commission, presiding officer, or the Atomic Safety and Licensing Board designated to rule on the request for hearing and/or petition for leave to intervene, will grant the request/petition if it determines that the requestor/petitioner has standing under the provisions of paragraph (d) of this section and has proposed at least one admissible contention that meets the requirements of paragraph (f) of this section. In ruling on the request for hearing/petition to intervene submitted by petitioners seeking to intervene in the proceeding on the HLW repository, the Commission, the presiding officer, or the Atomic Safety and Licensing Board shall also consider any failure of the petitioner to participate as a potential party in the pre-license application phase under subpart J of this part in addition to the factors in paragraph (d) of this section. If a request for hearing or petition to intervene is filed in response to any notice of hearing or opportunity for hearing, the applicant/licensee shall be deemed to be a party.

(b) Timing. Unless otherwise provided by the Commission, the request and/or petition and the list of contentions must be filed as follows:

(1) In proceedings for the direct or indirect transfer of control of an NRC license when the transfer requires prior approval of the NRC under the Commission's regulations, governing statute, or pursuant to a license condition, twenty (20) days from the date of publication of the notice in the Federal Register.

(2) In proceedings for the initial authorization to construct a high-level radioactive waste geologic repository, and the initial licensee to receive and process high level radioactive waste at a geological repository operations area, thirty (30) days from the date of publication of the notice in the Federal Register.

(3) In proceedings for which a Federal Register notice of agency action is published (other than a proceeding covered by paragraphs (b)(1) or (b)(2) of this section), not later than:

(i) The time specified in any notice of hearing or notice of proposed action or as provided by the presiding officer or the Atomic Safety and Licensing Board designated to rule on the request and/or petition, which may not be less than sixty (60) days from the date of publication of the notice in the Federal Register; or

(ii) If no period is specified, sixty (60) days from the date of publication of the notice.

(4) In proceedings for which a Federal Register notice of agency action is not published, not later than the latest of:

(i) Sixty (60) days after publication of notice on the NRC Web site at <http://www.nrc.gov/public-involve/major-actions.html>, or

(ii) Sixty (60) days after the requestor receives actual notice of a pending application, but not more than sixty (60) days after agency action on the application.

(5) For orders issued under § 2.202 the time period provided therein.

(c) Nontimely filings. (1) Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the request and/or petition and contentions that the request and/or petition should be granted and/or the contentions should be admitted based upon a balancing of the following factors to the extent that they apply to the particular nontimely filing:

- (i) Good cause, if any, for the failure to file on time;
  - (ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
  - (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding;
  - (iv) The possible effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest;
  - (v) The availability of other means whereby the requestor's/petitioner's interest will be protected;
  - (vi) The extent to which the requestor's/petitioner's interests will be represented by existing parties;
  - (vii) The extent to which the requestor's/petitioner's participation will broaden the issues or delay the proceeding;
- and
- (viii) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record.

(2) The requestor/petitioner shall address the factors in paragraphs (c)(1)(i) through (c)(1)(viii) of this section in its nontimely filing.

(d) Standing. (1) General requirements. A request for hearing or petition for leave to intervene must state:

- (i) The name, address and telephone number of the requestor or petitioner;
- (ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
- (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; and
- (iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.

(2) State, local governmental body, and affected, Federally-recognized Indian Tribe. (i) A State, local governmental body (county, municipality or other subdivision), and any affected Federally-recognized Indian Tribe that desires to participate as a party in the proceeding shall submit a request for hearing/petition to intervene. The request/petition must meet the requirements of this section (including the contention requirements in paragraph (f) of this section), except that a State, local governmental body or affected Federally-recognized Indian Tribe that wishes to be a party in a proceeding for a facility located within its boundaries need not address the standing requirements under this paragraph. The State, local governmental body, and affected Federally-recognized Indian Tribe shall, in its request/petition, each designate a single representative for the hearing.

(ii) The Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on requests for hearings or petitions for leave to intervene will admit as a party to a proceeding a single designated representative of the State, a single designated representative for each local governmental body (county, municipality or other subdivision), and a single designated representative for each affected Federally-recognized Indian Tribe. In determining the request/petition of a State, local governmental body, and any affected Federally-recognized Indian Tribe that wishes to be a party in a proceeding for a facility located within its boundaries, the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on requests for hearings or petitions for leave to intervene shall not require a further demonstration of standing.

(iii) In any proceeding on an application for a construction authorization for a high-level radioactive waste repository at a geologic repository operations area under parts 60 or 63 of this chapter, or an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area under parts 60 or 63 of this chapter, the Commission shall permit intervention by the State and local governmental body (county, municipality or other subdivision) in which such an area is located and by any affected Federally-recognized Indian Tribe as defined in parts 60 or 63 of this chapter if the requirements of paragraph (f) of this section are satisfied with respect to at least one

contention. All other petitions for intervention in any such proceeding must be reviewed under the provisions of paragraphs (a) through (f) of this section.

(3) The Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on requests for hearing and/or petitions for leave to intervene will determine whether the petitioner has an interest affected by the proceeding considering the factors enumerated in § 2.309(d)(1)-(2), among other things. In enforcement proceedings, the licensee or other person against whom the action is taken shall have standing.

(e) Discretionary Intervention. The presiding officer may consider a request for discretionary intervention when at least one requestor/petitioner has established standing and at least one admissible contention has been admitted so that a hearing will be held. A requestor/petitioner may request that his or her petition be granted as a matter of discretion in the event that the petitioner is determined to lack standing to intervene as a matter of right under paragraph (d)(1) of this section. Accordingly, in addition to addressing the factors in paragraph (d)(1) of this section, a petitioner who wishes to seek intervention as a matter of discretion in the event it is determined that standing as a matter of right is not demonstrated shall address the following factors in his/her initial petition, which the Commission, the presiding officer or the Atomic Safety and Licensing Board will consider and balance:

(1) Factors weighing in favor of allowing intervention --

(i) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record;

(ii) The nature and extent of the requestor's/petitioner's property, financial or other interests in the proceeding; and

(iii) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest;

(2) Factors weighing against allowing intervention --

(i) The availability of other means whereby the requestor's/petitioner's interest will be protected;

(ii) The extent to which the requestor's/petitioner's interest will be represented by existing parties; and

(iii) The extent to which the requestor's/petitioner's participation will inappropriately broaden the issues or delay the proceeding.

(f) Contentions. (1) A request for hearing or petition for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

(i) Provide a specific statement of the issue of law or fact to be raised or controverted, provided further, that the issue of law or fact to be raised in a request for hearing under *10 CFR 52.103(b)* must be directed at demonstrating that one or more of the acceptance criteria in the combined license have not been, or will not be met, and that the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection of the public health and safety;

(ii) Provide a brief explanation of the basis for the contention;

(iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;

(iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;

(v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue;

(vi) In a proceeding other than one under *10 CFR 52.103*, provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief; and

(vii) In a proceeding under *10 CFR 52.103(b)*, the information must be sufficient, and include supporting information showing, *prima facie*, that one or more of the acceptance criteria in the combined license have not been, or will not be met, and that the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection of the public health and safety. This information must include the specific portion of the report required by *10 CFR 52.99(c)* which the requestor believes is inaccurate, incorrect, and/or incomplete (i.e., fails to contain the necessary information required by § 52.99(c)). If the requestor identifies a specific portion of the § 52.99(c) report as incomplete and the requestor contends that the incomplete portion prevents the requestor from making the necessary *prima facie* showing, then the requestor must explain why this deficiency prevents the requestor from making the *prima facie* showing.

(2) Contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to a petitioner. On issues arising under the National Environmental Policy Act, the petitioner shall file contentions based on the applicant's environmental report. The petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer upon a showing that --

(i) The information upon which the amended or new contention is based was not previously available;

(ii) The information upon which the amended or new contention is based is materially different than information previously available; and

(iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

(3) If two or more requestors/petitioners seek to co-sponsor a contention, the requestors/petitioners shall jointly designate a representative who shall have the authority to act for the requestors/petitioners with respect to that contention. If a requestor/petitioner seeks to adopt the contention of another sponsoring requestor/petitioner, the requestor/petitioner who seeks to adopt the contention must either agree that the sponsoring requestor/petitioner shall act as the representative with respect to that contention, or jointly designate with the sponsoring requestor/petitioner a representative who shall have the authority to act for the requestors/petitioners with respect to that contention.

(g) Selection of hearing procedures. A request for hearing and/or petition for leave to intervene may, except in a proceeding under *10 CFR 52.103*, also address the selection of hearing procedures, taking into account the provisions of § 2.310. If a request/petition relies upon § 2.310(d), the request/petition must demonstrate, by reference to the contention and the bases provided and the specific procedures in subpart G of this part, that resolution of the contention necessitates resolution of material issues of fact which may be best determined through the use of the identified procedures.

(h) Answers to requests for hearing and petitions to intervene. Unless otherwise specified by the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on requests for hearings or petitions for leave to intervene --

(1) The applicant/licensee, the NRC staff, and any other party to a proceeding may file an answer to a request for a hearing, a petition to intervene and/or proffered contentions within twenty-five (25) days after service of the request for hearing, petition and/or contentions. Answers should address, at a minimum, the factors set forth in paragraphs (a) through (g) of this section insofar as these sections apply to the filing that is the subject of the answer.

(2) Except in a proceeding under *10 CFR 52.103*, the requestor/petitioner may file a reply to any answer. The reply must be filed within 7 days after service of that answer.

(3) No other written answers or replies will be entertained.

(i) Decision on request/petition. In all proceedings other than a proceeding under *10 CFR 52.103*, the presiding officer shall, within 45 days after the filing of answers and replies under paragraph (h) of this section, issue a decision on each request for hearing/petition to intervene, absent an extension from the Commission. The Commission, acting as the presiding officer, shall expeditiously grant or deny the request for hearing in a proceeding under *10 CFR 52.103*. The Commission's decision may not be the subject of any appeal under *10 CFR 2.311*.



## **10 C.F.R. § 2.325**



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TITLE 10 -- ENERGY  
CHAPTER I -- NUCLEAR REGULATORY COMMISSION  
PART 2 -- RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS  
AND ISSUANCE OF ORDERS  
SUBPART C -- RULES OF GENERAL APPLICABILITY: HEARING REQUESTS, PETITIONS TO  
INTERVENE, AVAILABILITY OF DOCUMENTS, SELECTION OF SPECIFIC HEARING PROCEDURES,  
PRESIDING OFFICER POWERS, AND GENERAL HEARING MANAGEMENT FOR NRC ADJUDICATORY  
HEARINGS

*10 CFR 2.325*

§ 2.325 Burden of proof.

Unless the presiding officer otherwise orders, the applicant or the proponent of an order has the burden of proof.



## **10 C.F.R. § 51.30**



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TITLE 10 -- ENERGY  
CHAPTER I -- NUCLEAR REGULATORY COMMISSION  
PART 51 -- ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED  
REGULATORY FUNCTIONS  
SUBPART A -- NATIONAL ENVIRONMENTAL POLICY ACT -- REGULATIONS IMPLEMENTING SECTION  
102(2) ENVIRONMENTAL ASSESSMENT

*10 CFR 51.30*

§ 51.30 Environmental assessment.

(a) An environmental assessment for proposed actions, other than those for a standard design certification under 10 CFR part 52 or a manufacturing license under part 52, shall identify the proposed action and include:

(1) A brief discussion of:

(i) The need for the proposed action;

(ii) Alternatives as required by section 102(2)(E) of NEPA;

(iii) The environmental impacts of the proposed action and alternatives as appropriate; and

(2) A list of agencies and persons consulted, and identification of sources used.

(b) Unless otherwise determined by the Commission, an environmental assessment will not include discussion of any aspect of the storage of spent fuel within the scope of the generic determination in § 51.23(a) and in accordance with the provisions of § 51.23(b).

(c) An environmental assessment for a proposed action regarding a monitored retrievable storage installation (MRS) will not address the need for the MRS or any alternative to the design criteria for an MRS set forth in section 141(b)(1) of the Nuclear Waste Policy Act of 1982 (96 Stat. 2242, 42 U.S.C. 10161(b)(1)).

(d) An environmental assessment for a standard design certification under subpart B of part 52 of this chapter must identify the proposed action, and will be limited to the consideration of the costs and benefits of severe accident mitigation design alternatives and the bases for not incorporating severe accident mitigation design alternatives in the design certification. An environmental assessment for an amendment to a design certification will be limited to the consideration of whether the design change which is the subject of the proposed amendment renders a severe accident mitigation design alternative previously rejected in the earlier environmental assessment to become cost beneficial, or results in the identification of new severe accident mitigation design alternatives, in which case the costs and benefits of new severe accident mitigation design alternatives and the bases for not incorporating new severe accident mitigation design alternatives in the design certification must be addressed.

(e) An environmental assessment for a manufacturing license under subpart F of part 52 of this chapter must identify the proposed action, and will be limited to the consideration of the costs and benefits of severe accident mitigation design alternatives and the bases for not incorporating severe accident mitigation design alternatives in the manufacturing license. An environmental assessment for an amendment to a manufacturing license will be limited to consideration of whether the design change which is the subject of the proposed amendment either renders a severe accident mitigation design alternative previously rejected in an environmental assessment to become cost beneficial, or results in the identification of new severe accident mitigation design alternatives, in which case the costs and benefits of new severe accident mitigation design alternatives and the bases for not incorporating new severe accident mitigation design alternatives in the manufacturing license must be addressed. In either case, the environmental assessment will not address the environmental impacts associated with manufacturing the reactor under the manufacturing license.





## **10 C.F.R. §51.31**



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TITLE 10 -- ENERGY  
CHAPTER I -- NUCLEAR REGULATORY COMMISSION  
PART 51 -- ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED  
REGULATORY FUNCTIONS  
SUBPART A -- NATIONAL ENVIRONMENTAL POLICY ACT -- REGULATIONS IMPLEMENTING SECTION  
102(2) ENVIRONMENTAL ASSESSMENT

*10 CFR 51.31*

§ 51.31 Determinations based on environmental assessment.

(a) General. Upon completion of an environmental assessment for proposed actions other than those involving a standard design certification or a manufacturing license under part 52 of this chapter, the appropriate NRC staff director will determine whether to prepare an environmental impact statement or a finding of no significant impact on the proposed action. As provided in § 51.33, a determination to prepare a draft finding of no significant impact may be made.

(b) Standard design certification. (1) For actions involving the issuance or amendment of a standard design certification, the Commission shall prepare a draft environmental assessment for public comment as part of the proposed rule. The proposed rule must state that:

(i) The Commission has determined in § 51.32 that there is no significant environmental impact associated with the issuance of the standard design certification or its amendment, as applicable; and

(ii) Comments on the environmental assessment will be limited to the consideration of SAMDAs as required by § 51.30(d).

(2) The Commission will prepare a final environmental assessment following the close of the public comment period for the proposed standard design certification.

(c) Manufacturing license. (1) Upon completion of the environmental assessment for actions involving issuance or amendment of a manufacturing license (manufacturing license environmental assessment), the appropriate NRC staff director will determine the costs and benefits of severe accident mitigation design alternatives and the bases for not incorporating severe accident mitigation design alternatives in the design of the reactor to be manufactured under the manufacturing license. The NRC staff director may determine to prepare a draft environmental assessment.

(2) The manufacturing license environmental assessment must state that:

(i) The Commission has determined in § 51.32 that there is no significant environmental impact associated with the issuance of a manufacturing license or an amendment to a manufacturing license, as applicable;

(ii) The environmental assessment will not address the environmental impacts associated with manufacturing the reactor under the manufacturing license; and

(iii) Comments on the environmental assessment will be limited to the consideration of severe accident mitigation design alternatives as required by § 51.30(e).

(3) If the NRC staff director makes a determination to prepare and issue a draft environmental assessment for public review and comment before making a final determination on the manufacturing license application, the assessment will be marked, "Draft." The NRC notice of availability on the draft environmental assessment will include a request for comments which specifies where comments should be submitted and when the comment period expires. The notice will

state that copies of the environmental assessment and any related environmental documents are available for public inspection and where inspections can be made. A copy of the final environmental assessment will be sent to the U.S. Environmental Protection Agency, the applicant, any party to a proceeding, each commenter, and any other Federal, State, and local agencies, and Indian tribes, State, regional, and metropolitan clearinghouses expressing an interest in the action. Additional copies will be made available in accordance with § 51.123.

(4) When a hearing is held under the regulations in part 2 of this chapter on the proposed issuance of the manufacturing license or amendment, the NRC staff director will prepare a final environmental assessment which may be subject to modification as a result of review and decision as appropriate to the nature and scope of the proceeding.

(5) Only a party admitted into the proceeding with respect to a contention on the environmental assessment, or an entity participating in the proceeding pursuant to § 2.315(c) of this chapter, may take a position and offer evidence on the matters within the scope of the environmental assessment.

## **10 C.F.R. §51.71**



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TITLE 10 -- ENERGY  
CHAPTER I -- NUCLEAR REGULATORY COMMISSION  
PART 51 -- ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED  
REGULATORY FUNCTIONS  
SUBPART A -- NATIONAL ENVIRONMENTAL POLICY ACT -- REGULATIONS IMPLEMENTING SECTION  
102(2)  
ENVIRONMENTAL IMPACT STATEMENTS  
DRAFT ENVIRONMENTAL IMPACT STATEMENTS -- GENERAL REQUIREMENTS

*10 CFR 51.71*

§ 51.71 Draft environmental impact statement -- contents.

(a) Scope. The draft environmental impact statement will be prepared in accordance with the scope decided upon in the scoping process required by §§ 51.26 and 51.29. As appropriate and to the extent required by the scope, the draft statement will address the topics in paragraphs (b), (c), (d) and (e) of this section and the matters specified in §§ 51.45, 51.50, 51.51, 51.52, 51.53, 51.54, 51.61 and 51.62.

(b) Analysis of major points of view. To the extent sufficient information is available, the draft environmental impact statement will include consideration of major points of view concerning the environmental impacts of the proposed action and the alternatives, and contain an analysis of significant problems and objections raised by other Federal, State, and local agencies, by any affected Indian tribes, and by other interested persons.

(c) Status of compliance. The draft environmental impact statement will list all Federal permits, licenses, approvals, and other entitlements which must be obtained in implementing the proposed action and will describe the status of compliance with those requirements. If it is uncertain whether a Federal permit, license, approval, or other entitlement is necessary, the draft environmental impact statement will so indicate.

(d) Analysis. Unless excepted in this paragraph or § 51.75, the draft environmental impact statement will include a preliminary analysis that considers and weighs the environmental effects of the proposed action; the environmental impacts of alternatives to the proposed action; and alternatives available for reducing or avoiding adverse environmental effects and consideration of the economic, technical, and other benefits and costs of the proposed action and alternatives and indicate what other interests and considerations of Federal policy, including factors not related to environmental quality if applicable, are relevant to the consideration of environmental effects of the proposed action identified under paragraph (a) of this section. The draft supplemental environmental impact statement prepared at the license renewal stage under § 51.95(c) need not discuss the economic or technical benefits and costs of either the proposed action or alternatives except if benefits and costs are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation. In addition, the supplemental environmental impact statement prepared at the license renewal stage need not discuss other issues not related to the environmental effects of the proposed action and associated alternatives. The draft supplemental environmental impact statement for license renewal prepared under § 51.95(c) will rely on conclusions as amplified by the supporting information in the GEIS for issues designated as Category 1 in appendix B to subpart A of this part. The draft supplemental environmental impact statement must contain an analysis of those issues identified as Category 2 in appendix B to subpart A of this part that are open for the proposed action. The analysis for all draft environmental impact statements will, to the fullest extent practicable, quantify the various factors considered. To the extent that there are important qualitative considerations or factors that cannot be quantified, these considerations or factors will be discussed in qualitative terms. Consideration will be given to compliance with environmental quality standards and requirements that have been imposed by Federal, State, regional, and local agencies having responsibility for environmental protection, including applicable zoning and land-use regulations and water pollution limitations or requirements issued or imposed under the Federal Water Pollution Control Act. The environmental impact of the proposed action will be considered in the analysis with respect to

matters covered by environmental quality standards and requirements irrespective of whether a certification or license from the appropriate authority has been obtained. n3 While satisfaction of Commission standards and criteria pertaining to radiological effects will be necessary to meet the licensing requirements of the Atomic Energy Act, the analysis will, for the purposes of NEPA, consider the radiological effects of the proposed action and alternatives.

n3 Compliance with the environmental quality standards and requirements of the Federal Water Pollution Control Act (imposed by EPA or designated permitting states) is not a substitute for, and does not negate the requirement for NRC to weigh all environmental effects of the proposed action, including the degradation, if any, of water quality, and to consider alternatives to the proposed action that are available for reducing adverse effects. Where an environmental assessment of aquatic impact from plant discharges is available from the permitting authority, the NRC will consider the assessment in its determination of the magnitude of environmental impacts for striking an overall cost-benefit balance at the construction permit and operating license and early site permit and combined license stages, and in its determination of whether the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decision-makers would be unreasonable at the license renewal stage. When no such assessment of aquatic impacts is available from the permitting authority, NRC will establish on its own, or in conjunction with the permitting authority and other agencies having relevant expertise, the magnitude of potential impacts for striking an overall cost-benefit balance for the facility at the construction permit and operating license and early site permit and combined license stages, and in its determination of whether the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decision-makers would be unreasonable at the license renewal stage.

(e) Effect of limited work authorization. If a limited work authorization was issued either in connection with or subsequent to an early site permit, or in connection with a construction permit or combined license application, then the environmental impact statement for the construction permit or combined license application will not address or consider the sunk costs associated with the limited work authorization.

(f) Preliminary recommendation. The draft environmental impact statement normally will include a preliminary recommendation by the NRC staff respecting the proposed action. This preliminary recommendation will be based on the information and analysis described in paragraphs (a) through (d) of this section and §§ 51.75, 51.76, 51.80, 51.85, and 51.95, as appropriate, and will be reached after considering the environmental effects of the proposed action and reasonable alternatives, n4 and, except for supplemental environmental impact statements for the operating license renewal stage prepared pursuant to § 51.95(c), after weighing the costs and benefits of the proposed action. In lieu of a recommendation, the NRC staff may indicate in the draft statement that two or more alternatives remain under consideration.

n4 The consideration of reasonable alternatives to a proposed action involving nuclear power reactors (e.g., alternative energy sources) is intended to assist the NRC in meeting its NEPA obligations and does not preclude any State authority from making separate determinations with respect to these alternatives and in no way preempts, displaces, or affects the authority of States or other Federal agencies to address these issues.



## **10 C.F.R. § 51.75**



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TITLE 10 -- ENERGY  
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PART 51 -- ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED  
REGULATORY FUNCTIONS  
SUBPART A -- NATIONAL ENVIRONMENTAL POLICY ACT -- REGULATIONS IMPLEMENTING SECTION  
102(2)  
ENVIRONMENTAL IMPACT STATEMENTS  
DRAFT ENVIRONMENTAL IMPACT STATEMENTS -- PRODUCTION AND UTILIZATION FACILITIES

*10 CFR 51.75*

§ 51.75 Draft environmental impact statement--construction permit, early site permit, or combined license.

(a) Construction permit stage. A draft environmental impact statement relating to issuance of a construction permit for a production or utilization facility will be prepared in accordance with the procedures and measures described in §§ 51.70, 51.71, 51.72, and 51.73. The contribution of the environmental effects of the uranium fuel cycle activities specified in § 51.51 shall be evaluated on the basis of impact values set forth in Table S-3, Table of Uranium Fuel Cycle Environmental Data, which shall be set out in the draft environmental impact statement. With the exception of radon-222 and technetium-99 releases, no further discussion of fuel cycle release values and other numerical data that appear explicitly in the table shall be required. The impact statement shall take account of dose commitments and health effects from fuel cycle effluents set forth in Table S-3 and shall in addition take account of economic, socioeconomic, and possible cumulative impacts and other fuel cycle impacts as may reasonably appear significant.

(b) Early site permit stage. A draft environmental impact statement relating to issuance of an early site permit for a production or utilization facility will be prepared in accordance with the procedures and measures described in §§ 51.70, 51.71, 51.72, 51.73, and this section. The contribution of the environmental effects of the uranium fuel cycle activities specified in § 51.51 shall be evaluated on the basis of impact values set forth in Table S-3, Table of Uranium Fuel Cycle Environmental Data, which shall be set out in the draft environmental impact statement. With the exception of radon-222 and technetium-99 releases, no further discussion of fuel cycle release values and other numerical data that appear explicitly in the table shall be required. The impact statement shall take account of dose commitments and health effects from fuel cycle effluents set forth in Table S-3 and shall in addition take account of economic, socioeconomic, and possible cumulative impacts and other fuel cycle impacts as may reasonably appear significant. The draft environmental impact statement must include an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed. The draft environmental impact statement must also include an evaluation of the environmental effects of construction and operation of a reactor, or reactors, which have design characteristics that fall within the site characteristics and design parameters for the early site permit application, but only to the extent addressed in the early site permit environmental report or otherwise necessary to determine whether there is any obviously superior alternative to the site proposed. The draft environmental impact statement must not include an assessment of the economic, technical, or other benefits (for example, need for power) and costs of the proposed action or an evaluation of alternative energy sources, unless these matters are addressed in the early site permit environmental report.

n5 Values for releases of Rn-222 and Tc-99 are not given in the table. The amount and significance of Rn-222 releases from the fuel cycle and Tc-99 releases from waste management or reprocessing activities shall be considered in the draft environmental impact statement and may be the subject of litigation in individual licensing proceedings.

(c) Combined license stage. A draft environmental impact statement relating to issuance of a combined license that does not reference an early site permit will be prepared in accordance with the procedures and measures described in §§ 51.70, 51.71, 51.72, and 51.73. The contribution of the environmental effects of the uranium fuel cycle activities specified in § 51.51 shall be evaluated on the basis of impact values set forth in Table S-3, Table of Uranium Fuel Cycle En-

vironmental Data, which shall be set out in the draft environmental impact statement. With the exception of radon-222 and technetium-99 releases, no further discussion of fuel cycle release values and other numerical data that appear explicitly in the table shall be required. <5> The impact statement shall take account of dose commitments and health effects from fuel cycle effluents set forth in Table S-3 and shall in addition take account of economic, socioeconomic, and possible cumulative impacts and other fuel cycle impacts as may reasonably appear significant. The impact statement will include a discussion of the storage of spent fuel for the nuclear power plant within the scope of the generic determination in § 51.23(a) and in accordance with § 51.23(b).

(1) Combined license application referencing an early site permit. If the combined license application references an early site permit, then the NRC staff shall prepare a draft supplement to the early site permit environmental impact statement. The supplement must be prepared in accordance with § 51.92(e).

(2) Combined license application referencing a standard design certification. If the combined license application references a standard design certification and the site characteristics of the combined license's site fall within the site parameters specified in the design certification environmental assessment, then the draft combined license environmental impact statement shall incorporate by reference the design certification environmental assessment, and summarize the findings and conclusions of the environmental assessment with respect to severe accident mitigation design alternatives.

(3) Combined license application referencing a manufactured reactor. If the combined license application proposes to use a manufactured reactor and the site characteristics of the combined license's site fall within the site parameters specified in the manufacturing license environmental assessment, then the draft combined license environmental impact statement shall incorporate by reference the manufacturing license environmental assessment, and summarize the findings and conclusions of the environmental assessment with respect to severe accident mitigation design alternatives. The combined license environmental impact statement report will not address the environmental impacts associated with manufacturing the reactor under the manufacturing license.

## **10 C.F.R. §51.92**



\*\*\* This section is current through the July 26, 2012 \*\*\*  
\*\*\* issue of the Federal Register \*\*\*

TITLE 10 -- ENERGY  
CHAPTER I -- NUCLEAR REGULATORY COMMISSION  
PART 51 -- ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED  
REGULATORY FUNCTIONS  
SUBPART A -- NATIONAL ENVIRONMENTAL POLICY ACT -- REGULATIONS IMPLEMENTING SECTION  
102(2) ENVIRONMENTAL IMPACT STATEMENTS  
FINAL ENVIRONMENTAL IMPACT STATEMENTS -- GENERAL REQUIREMENTS

*10 CFR 51.92*

§ 51.92 Supplement to the final environmental impact statement.

(a) If the proposed action has not been taken, the NRC staff will prepare a supplement to a final environmental impact statement for which a notice of availability has been published in the Federal Register as provided in § 51.118, if:

(1) There are substantial changes in the proposed action that are relevant to environmental concerns; or

(2) There are new and significant circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(b) In a proceeding for a combined license application under 10 CFR part 52 referencing an early site permit under part 52, the NRC staff shall prepare a supplement to the final environmental impact statement for the referenced early site permit in accordance with paragraph (e) of this section.

(c) The NRC staff may prepare a supplement to a final environmental impact statement when, in its opinion, preparation of a supplement will further the purposes of NEPA.

(d) The supplement to a final environmental impact statement will be prepared in the same manner as the final environmental impact statement except that a scoping process need not be used.

(e) The supplement to an early site permit final environmental impact statement which is prepared for a combined license application in accordance with § 51.75(c)(1) and paragraph (b) of this section must:

(1) Identify the proposed action as the issuance of a combined license for the construction and operation of a nuclear power plant as described in the combined license application at the site described in the early site permit referenced in the combined license application;

(2) Incorporate by reference the final environmental impact statement prepared for the early site permit;

(3) Contain no separate discussion of alternative sites;

(4) Include an analysis of the economic, technical, and other benefits and costs of the proposed action, to the extent that the final environmental impact statement prepared for the early site permit did not include an assessment of these benefits and costs;

(5) Include an analysis of other energy alternatives, to the extent that the final environmental impact statement prepared for the early site permit did not include an assessment of energy alternatives;

(6) Include an analysis of any environmental issue related to the impacts of construction or operation of the facility that

was not resolved in the proceeding on the early site permit; and

(7) Include an analysis of the issues related to the impacts of construction and operation of the facility that were resolved in the early site permit proceeding for which new and significant information has been identified, including, but not limited to, new and significant information demonstrating that the design of the facility falls outside the site characteristics and design parameters specified in the early site permit.

(f)(1) A supplement to a final environmental impact statement will be accompanied by or will include a request for comments as provided in § 51.73 and a notice of availability will be published in the Federal Register as provided in § 51.117 if paragraphs (a) or (b) of this section applies.

(2) If comments are not requested, a notice of availability of a supplement to a final environmental impact statement will be published in the Federal Register as provided in § 51.118.



## **10 C.F.R. §51.104**



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TITLE 10 -- ENERGY  
CHAPTER I -- NUCLEAR REGULATORY COMMISSION  
PART 51 -- ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED  
REGULATORY FUNCTIONS  
SUBPART A -- NATIONAL ENVIRONMENTAL POLICY ACT -- REGULATIONS IMPLEMENTING SECTION  
102(2)  
NEPA PROCEDURE AND ADMINISTRATIVE ACTION  
GENERAL

*10 CFR 51.104*

§ 51.104 NRC proceeding using public hearings; consideration of environmental impact statement.

(a)(1) In any proceeding in which (i) a hearing is held on the proposed action, (ii) a final environmental impact statement has been prepared in connection with the proposed action, and (iii) matters within the scope of NEPA and this subpart are in issue, the NRC staff may not offer the final environmental impact statement in evidence or present the position of the NRC staff on matters within the scope of NEPA and this subpart until the final environmental impact statement is filed with the Environmental Protection Agency, furnished to commenting agencies and made available to the public.

(2) Any party to the proceeding may take a position and offer evidence on the aspects of the proposed action within the scope of NEPA and this subpart in accordance with the provisions of part 2 of this chapter applicable to that proceeding or in accordance with the terms of the notice of hearing.

(3) In the proceeding the presiding officer will decide those matters in controversy among the parties within the scope of NEPA and this subpart.

(b) In any proceeding in which a hearing is held where the NRC staff has determined that no environmental impact statement need be prepared for the proposed action, unless the Commission orders otherwise, any party to the proceeding may take a position and offer evidence on the aspects of the proposed action within the scope of NEPA and this subpart in accordance with the provisions of part 2 of this chapter applicable to that proceeding or in accordance with the terms of the notice of hearing. In the proceeding, the presiding officer will decide any such matters in controversy among the parties.

(c) In any proceeding in which a limited work authorization is requested, unless the Commission orders otherwise, a party to the proceeding may take a position and offer evidence only on the aspects of the proposed action within the scope of NEPA and this subpart which are within the scope of that party's admitted contention, in accordance with the provisions of part 2 of this chapter applicable to the limited work authorization or in accordance with the terms of any notice of hearing applicable to the limited work authorization. In the proceeding, the presiding officer will decide all matters in controversy among the parties.



## **10 C.F.R. §52.17**



\*\*\* This section is current through the July 26, 2012 \*\*\*  
\*\*\* issue of the Federal Register \*\*\*

TITLE 10 -- ENERGY  
CHAPTER I -- NUCLEAR REGULATORY COMMISSION  
PART 52 -- LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS  
SUBPART A -- EARLY SITE PERMITS

*10 CFR 52.17*

§ 52.17 Contents of applications; technical information.

(a) For applications submitted before September 27, 2007, the rule provisions in effect at the date of docketing apply unless otherwise requested by the applicant in writing. The application must contain:

(1) A site safety analysis report. The site safety analysis report shall include the following:

(i) The specific number, type, and thermal power level of the facilities, or range of possible facilities, for which the site may be used;

(ii) The anticipated maximum levels of radiological and thermal effluents each facility will produce;

(iii) The type of cooling systems, intakes, and outflows that may be associated with each facility;

(iv) The boundaries of the site;

(v) The proposed general location of each facility on the site;

(vi) The seismic, meteorological, hydrologic, and geologic characteristics of the proposed site with appropriate consideration of the most severe of the natural phenomena that have been historically reported for the site and surrounding area and with sufficient margin for the limited accuracy, quantity, and period of time in which the historical data have been accumulated;

(vii) The location and description of any nearby industrial, military, or transportation facilities and routes;

(viii) The existing and projected future population profile of the area surrounding the site;

(ix) A description and safety assessment of the site on which a facility is to be located. The assessment must contain an analysis and evaluation of the major structures, systems, and components of the facility that bear significantly on the acceptability of the site under the radiological consequence evaluation factors identified in paragraphs (a)(1)(ix)(A) and (a)(1)(ix)(B) of this section. In performing this assessment, an applicant shall assume a fission product release <sup>n1</sup> from the core into the containment assuming that the facility is operated at the ultimate power level contemplated. The applicant shall perform an evaluation and analysis of the postulated fission product release, using the expected demonstrable containment leak rate and any fission product cleanup systems intended to mitigate the consequences of the accidents, together with applicable site characteristics, including site meteorology, to evaluate the offsite radiological consequences. Site characteristics must comply with part 100 of this chapter. The evaluation must determine that:

<sup>n1</sup> The fission product release assumed for this evaluation should be based upon a major accident, hypothesized for purposes of site analysis or postulated from considerations of possible accidental events. Such accidents have generally been assumed to result in substantial meltdown of the core with subsequent release into the containment of appreciable quantities of fission products.

(A) An individual located at any point on the boundary of the exclusion area for any 2 hour period following the onset

of the postulated fission product release, would not receive a radiation dose in excess of 25 rem n2 total effective dose equivalent (TEDE).

n2 A whole body dose of 25 rem has been stated to correspond numerically to the once in a lifetime accidental or emergency dose for radiation workers which, according to NCRP recommendations at the time could be disregarded in the determination of their radiation exposure status (see NBS Handbook 69 dated June 5, 1959). However, its use is not intended to imply that this number constitutes an acceptable limit for an emergency dose to the public under accident conditions. Rather, this dose value has been set forth in this section as a reference value, which can be used in the evaluation of plant design features with respect to postulated reactor accidents, to assure that these designs provide assurance of low risk of public exposure to radiation, in the event of an accidents.

(B) An individual located at any point on the outer boundary of the low population zone, who is exposed to the radioactive cloud resulting from the postulated fission product release (during the entire period of its passage) would not receive a radiation dose in excess of 25 rem TEDE;

(x) Information demonstrating that site characteristics are such that adequate security plans and measures can be developed;

(xi) For applications submitted after September 27, 2007, a description of the quality assurance program applied to site-related activities for the future design, fabrication, construction, and testing of the structures, systems, and components of a facility or facilities that may be constructed on the site. Appendix B to 10 CFR part 50 sets forth the requirements for quality assurance programs for nuclear power plants. The description of the quality assurance program for a nuclear power plant site shall include a discussion of how the applicable requirements of appendix B to part 50 of this chapter will be satisfied; and

(xii) An evaluation of the site against applicable sections of the Standard Review Plan (SRP) revision in effect 6 months before the docket date of the application. The evaluation required by this section shall include an identification and description of all differences in analytical techniques and procedural measures proposed for a site and those corresponding techniques and measures given in the SRP acceptance criteria. Where such a difference exists, the evaluation shall discuss how the proposed alternative provides an acceptable method of complying with the Commission's regulations, or portions thereof, that underlie the corresponding SRP acceptance criteria. The SRP is not a substitute for the regulations, and compliance is not a requirement.

(2) A complete environmental report as required by 10 CFR 51.50(b).

(b)(1) The site safety analysis report must identify physical characteristics of the proposed site, such as egress limitations from the area surrounding the site, that could pose a significant impediment to the development of emergency plans. If physical characteristics are identified that could pose a significant impediment to the development of emergency plans, the application must identify measures that would, when implemented, mitigate or eliminate the significant impediment.

(2) The site safety analysis report may also:

(i) Propose major features of the emergency plans, in accordance with the pertinent standards of 10 CFR 50.47, and the requirements of appendix E to 10 CFR part 50, such as the exact size and configuration of the emergency planning zones, for review and approval by NRC, in consultation with the Department of Homeland Security (DHS) in the absence of complete and integrated emergency plans; or

(ii) Propose complete and integrated emergency plans for review and approval by the NRC, in consultation with DHS, in accordance with the applicable standards of 10 CFR 50.47, and the requirements of appendix E to 10 CFR part 50. To the extent approval of emergency plans is sought, the application must contain the information required by §§ 50.33(g) and (j) of this chapter.

(3) Emergency plans submitted under paragraph (b)(2)(ii) of this section must include the proposed inspections, tests, and analyses that the holder of a combined license referencing the early site permit shall perform, and the acceptance



criteria that are necessary and sufficient to provide reasonable assurance that, if the inspections, tests, and analyses are performed and the acceptance criteria met, the facility has been constructed and will be operated in conformity with the emergency plans, the provisions of the Act, and the Commission's rules and regulations. Major features of an emergency plan submitted under paragraph (b)(2)(i) of this section may include proposed inspections, tests, analyses, and acceptance criteria.

(4) Under paragraphs (b)(1) and (b)(2)(i) of this section, the site safety analysis report must include a description of contacts and arrangements made with Federal, State, and local governmental agencies with emergency planning responsibilities. The site safety analysis report must contain any certifications that have been obtained. If these certifications cannot be obtained, the site safety analysis report must contain information, including a utility plan, sufficient to show that the proposed plans provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the site. Under the option set forth in paragraph (b)(2)(ii) of this section, the applicant shall make good faith efforts to obtain from the same governmental agencies certifications that:

(i) The proposed emergency plans are practicable;

(ii) These agencies are committed to participating in any further development of the plans, including any required field demonstrations, and

(iii) That these agencies are committed to executing their responsibilities under the plans in the event of an emergency.

(c) An applicant may request that a limited work authorization under 10 CFR 50.10 be issued in conjunction with the early site permit. The application must include the information otherwise required by 10 CFR 50.10(d)(3). Applications submitted before, and pending as of November 8, 2007, must include the information required by § 52.17(c) effective on the date of docketing.

(d) Each applicant for an early site permit under this part shall protect Safeguards Information against unauthorized disclosure in accordance with the requirements in §§ 73.21 and 73.22 of this chapter, as applicable.



## **10 C.F.R. §52.18**



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TITLE 10 -- ENERGY  
CHAPTER I -- NUCLEAR REGULATORY COMMISSION  
PART 52 -- LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS  
SUBPART A -- EARLY SITE PERMITS

*10 CFR 52.18*

§ 52.18 Standards for review of applications.

Applications filed under this subpart will be reviewed according to the applicable standards set out in 10 CFR part 50 and its appendices and 10 CFR part 100. In addition, the Commission shall prepare an environmental impact statement during review of the application, in accordance with the applicable provisions of 10 CFR part 51. The Commission shall determine, after consultation with DHS, whether the information required of the applicant by § 52.17(b)(1) shows that there is no significant impediment to the development of emergency plans that cannot be mitigated or eliminated by measures proposed by the applicant, whether any major features of emergency plans submitted by the applicant under § 52.17(b)(2)(i) are acceptable in accordance with the applicable standards of 10 CFR 50.47 and the requirements of appendix E to 10 CFR part 50, and whether any emergency plans submitted by the applicant under § 52.17(b)(2)(ii) provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.



## **10 C.F.R. §52.26**





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TITLE 10 -- ENERGY  
CHAPTER I -- NUCLEAR REGULATORY COMMISSION  
PART 52 -- LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS  
SUBPART A -- EARLY SITE PERMITS

*10 CFR 52.26*

§ 52.26 Duration of permit.

(a) Except as provided in paragraph (b) of this section, an early site permit issued under this subpart may be valid for not less than 10, nor more than 20 years from the date of issuance.

(b) An early site permit continues to be valid beyond the date of expiration in any proceeding on a construction permit application or a combined license application that references the early site permit and is docketed before the date of expiration of the early site permit, or, if a timely application for renewal of the permit has been docketed, before the Commission has determined whether to renew the permit.

(c) An applicant for a construction permit or combined license may, at its own risk, reference in its application a site for which an early site permit application has been docketed but not granted.

(d) Upon issuance of a construction permit or combined license, a referenced early site permit is subsumed, to the extent referenced, into the construction permit or combined license.



## **10 C.F.R. §52.51**



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TITLE 10 -- ENERGY  
CHAPTER I -- NUCLEAR REGULATORY COMMISSION  
PART 52 -- LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS  
SUBPART B -- STANDARD DESIGN CERTIFICATIONS

*10 CFR 52.51*

§ 52.51 Administrative review of applications.

(a) A standard design certification is a rule that will be issued in accordance with the provisions of subpart H of 10 CFR part 2, as supplemented by the provisions of this section. The Commission shall initiate the rulemaking after an application has been filed under § 52.45 and shall specify the procedures to be used for the rulemaking. The notice of proposed rulemaking published in the Federal Register must provide an opportunity for the submission of comments on the proposed design certification rule. If, at the time a proposed design certification rule is published in the Federal Register under this paragraph (a), the Commission decides that a legislative hearing should be held, the information required by 10 CFR 2.1502(c) must be included in the Federal Register document for the proposed design certification.

(b) Following the submission of comments on the proposed design certification rule, the Commission may, at its discretion, hold a legislative hearing under the procedures in subpart O of part 2 of this chapter. The Commission shall publish a document in the Federal Register of its decision to hold a legislative hearing. The document shall contain the information specified in paragraph (c) of this section, and specify whether the Commission or a presiding officer will conduct the legislative hearing.

(c) Notwithstanding anything in 10 CFR 2.390 to the contrary, proprietary information will be protected in the same manner and to the same extent as proprietary information submitted in connection with applications for licenses, provided that the design certification shall be published in Chapter I of this title.



## **10 C.F.R. §52.54**





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TITLE 10 -- ENERGY  
CHAPTER I -- NUCLEAR REGULATORY COMMISSION  
PART 52 -- LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS  
SUBPART B -- STANDARD DESIGN CERTIFICATIONS

10 CFR 52.54

§ 52.54 Issuance of standard design certification.

(a) After conducting a rulemaking proceeding under § 52.51 on an application for a standard design certification and receiving the report to be submitted by the Advisory Committee on Reactor Safeguards under § 52.53, the Commission may issue a standard design certification in the form of a rule for the design which is the subject of the application, if the Commission determines that:

(1) The application meets the applicable standards and requirements of the Atomic Energy Act and the Commission's regulations;

(2) Notifications, if any, to other agencies or bodies have been duly made;

(3) There is reasonable assurance that the standard design conforms with the provisions of the Act, and the Commission's regulations;

(4) The applicant is technically qualified;

(5) The proposed inspections, tests, analyses, and acceptance criteria are necessary and sufficient, within the scope of the standard design, to provide reasonable assurance that, if the inspections, tests, and analyses are performed and the acceptance criteria met, the facility has been constructed and will be operated in accordance with the design certification, the provisions of the Act, and the Commission's regulations;

(6) Issuance of the standard design certification will not be inimical to the common defense and security or to the health and safety of the public;

(7) The findings required by subpart A of part 51 of this chapter have been made; and

(8) The applicant has implemented the quality assurance program described or referenced in the safety analysis report.

(b) The design certification rule must specify the site parameters, design characteristics, and any additional requirements and restrictions of the design certification rule.

(c) After the Commission has adopted a final design certification rule, the applicant shall not permit any individual to have access to or any facility to possess restricted data or classified National Security Information until the individual and/or facility has been approved for access under the provisions of 10 CFR parts 25 and/or 95, as applicable.



## **10 C.F.R. §52.63**



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TITLE 10 -- ENERGY  
CHAPTER I -- NUCLEAR REGULATORY COMMISSION  
PART 52 -- LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS  
SUBPART B -- STANDARD DESIGN CERTIFICATIONS

10 CFR 52.63

§ 52.63 Finality of standard design certifications.

(a)(1) Notwithstanding any provision in 10 CFR 50.109, while a standard design certification rule is in effect under §§ 52.55 or 52.61, the Commission may not modify, rescind, or impose new requirements on the certification information, whether on its own motion, or in response to a petition from any person, unless the Commission determines in a rulemaking that the change:

- (i) Is necessary either to bring the certification information or the referencing plants into compliance with the Commission's regulations applicable and in effect at the time the certification was issued;
- (ii) Is necessary to provide adequate protection of the public health and safety or the common defense and security;
- (iii) Reduces unnecessary regulatory burden and maintains protection to public health and safety and the common defense and security;
- (iv) Provides the detailed design information to be verified under those inspections, tests, analyses, and acceptance criteria (ITAAC) which are directed at certification information (i.e., design acceptance criteria);
- (v) Is necessary to correct material errors in the certification information;
- (vi) Substantially increases overall safety, reliability, or security of facility design, construction, or operation, and the direct and indirect costs of implementation of the rule change are justified in view of this increased safety, reliability, or security; or
- (vii) Contributes to increased standardization of the certification information.

(2)(i) In a rulemaking under § 52.63(a)(1), except for § 52.63(a)(1)(ii), the Commission will give consideration to whether the benefits justify the costs for plants that are already licensed or for which an application for a permit or license is under consideration.

(ii) The rulemaking procedures for changes under § 52.63(a)(1) must provide for notice and opportunity for public comment.

(3) Any modification the NRC imposes on a design certification rule under paragraph (a)(1) of this section will be applied to all plants referencing the certified design, except those to which the modification has been rendered technically irrelevant by action taken under paragraphs (a)(4) or (b)(1) of this section.

(4) The Commission may not impose new requirements by plant-specific order on any part of the design of a specific plant referencing the design certification rule if that part was approved in the design certification while a design certification rule is in effect under § 52.55 or § 52.61, unless:

- (i) A modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the time the certification was issued, or to assure adequate protection of the public health and safety or the common defense

and security; and

(ii) Special circumstances as defined in 10 CFR 52.7 are present. In addition to the factors listed in § 52.7, the Commission shall consider whether the special circumstances which § 52.7 requires to be present outweigh any decrease in safety that may result from the reduction in standardization caused by the plant-specific order.

(5) Except as provided in 10 CFR 2.335, in making the findings required for issuance of a combined license, construction permit, operating license, or manufacturing license, or for any hearing under § 52.103, the Commission shall treat as resolved those matters resolved in connection with the issuance or renewal of a design certification rule.

(b)(1) An applicant or licensee who references a design certification rule may request an exemption from one or more elements of the certification information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of § 52.7. In addition to the factors listed in § 52.7, the Commission shall consider whether the special circumstances that § 52.7 requires to be present outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption. The granting of an exemption on request of an applicant is subject to litigation in the same manner as other issues in the operating license or combined license hearing.

(2) Subject to § 50.59 of this chapter, a licensee who references a design certification rule may make departures from the design of the nuclear power facility, without prior Commission approval, unless the proposed departure involves a change to the design as described in the rule certifying the design. The licensee shall maintain records of all departures from the facility and these records must be maintained and available for audit until the date of termination of the license.

(c) The Commission will require, before granting a construction permit, combined license, operating license, or manufacturing license which references a design certification rule, that information normally contained in certain procurement specifications and construction and installation specifications be completed and available for audit if the information is necessary for the Commission to make its safety determinations, including the determination that the application is consistent with the certification information. This information may be acquired by appropriate arrangements with the design certification applicant.

## **10 C.F.R. §52.79**





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CHAPTER I -- NUCLEAR REGULATORY COMMISSION  
PART 52 -- LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS  
SUBPART C -- COMBINED LICENSES

*10 CFR 52.79*

§ 52.79 Contents of applications; technical information in final safety analysis report.

(a) The application must contain a final safety analysis report that describes the facility, presents the design bases and the limits on its operation, and presents a safety analysis of the structures, systems, and components of the facility as a whole. The final safety analysis report shall include the following information, at a level of information sufficient to enable the Commission to reach a final conclusion on all safety matters that must be resolved by the Commission before issuance of a combined license:

(1)(i) The boundaries of the site;

(ii) The proposed general location of each facility on the site;

(iii) The seismic, meteorological, hydrologic, and geologic characteristics of the proposed site with appropriate consideration of the most severe of the natural phenomena that have been historically reported for the site and surrounding area and with sufficient margin for the limited accuracy, quantity, and time in which the historical data have been accumulated;

(iv) The location and description of any nearby industrial, military, or transportation facilities and routes;

(v) The existing and projected future population profile of the area surrounding the site;

(vi) A description and safety assessment of the site on which the facility is to be located. The assessment must contain an analysis and evaluation of the major structures, systems, and components of the facility that bear significantly on the acceptability of the site under the radiological consequence evaluation factors identified in paragraphs (a)(1)(vi)(A) and (a)(1)(vi)(B) of this section. In performing this assessment, an applicant shall assume a fission product release <sup>n5</sup> from the core into the containment assuming that the facility is operated at the ultimate power level contemplated. The applicant shall perform an evaluation and analysis of the postulated fission product release, using the expected demonstrable containment leak rate and any fission product cleanup systems intended to mitigate the consequences of the accidents, together with applicable site characteristics, including site meteorology, to evaluate the offsite radiological consequences. Site characteristics must comply with part 100 of this chapter. The evaluation must determine that:

<sup>n5</sup> The fission product release assumed for this evaluation should be based upon a major accident, hypothesized for purposes of site analysis or postulated from considerations of possible accidental events. These accidents have generally been assumed to result in substantial meltdown of the core with subsequent release into the containment of appreciable quantities of fission products.

(A) An individual located at any point on the boundary of the exclusion area for any 2-hour period following the onset of the postulated fission product release, would not receive a radiation dose in excess of 25 rem <sup>n6</sup> total effective dose equivalent (TEDE).

<sup>n6</sup> A whole body dose of 25 rem has been stated to correspond numerically to the once in a lifetime accidental or emergency dose for radiation workers which, according to NCRP recommendations at the time could be disregarded in the determination of their radiation exposure status (see NBS Handbook 69 dated June 5, 1959). However, its use is not

intended to imply that this number constitutes an acceptable limit for an emergency dose to the public under accident conditions. Rather, this dose value has been set forth in this section as a reference value, which can be used in the evaluation of plant design features with respect to postulated reactor accidents, to assure that these designs provide assurance of low risk of public exposure to radiation, in the event of an accident.

(B) An individual located at any point on the outer boundary of the low population zone, who is exposed to the radioactive cloud resulting from the postulated fission product release (during the entire period of its passage) would not receive a radiation dose in excess of 25 rem TEDE; and

(2) A description and analysis of the structures, systems, and components of the facility with emphasis upon performance requirements, the bases, with technical justification therefor, upon which these requirements have been established, and the evaluations required to show that safety functions will be accomplished. It is expected that reactors will reflect through their design, construction, and operation an extremely low probability for accidents that could result in the release of significant quantities of radioactive fission products. The descriptions shall be sufficient to permit understanding of the system designs and their relationship to safety evaluations. Items such as the reactor core, reactor coolant system, instrumentation and control systems, electrical systems, containment system, other engineered safety features, auxiliary and emergency systems, power conversion systems, radioactive waste handling systems, and fuel handling systems shall be discussed insofar as they are pertinent. The following power reactor design characteristics and proposed operation will be taken into consideration by the Commission:

(i) Intended use of the reactor including the proposed maximum power level and the nature and inventory of contained radioactive materials;

(ii) The extent to which generally accepted engineering standards are applied to the design of the reactor;

(iii) The extent to which the reactor incorporates unique, unusual or enhanced safety features having a significant bearing on the probability or consequences of accidental release of radioactive materials;

(iv) The safety features that are to be engineered into the facility and those barriers that must be breached as a result of an accident before a release of radioactive material to the environment can occur. Special attention must be directed to plant design features intended to mitigate the radiological consequences of accidents. In performing this assessment, an applicant shall assume a fission product release  $n_7$  from the core into the containment assuming that the facility is operated at the ultimate power level contemplated;

$n_7$  The fission product release assumed for this evaluation should be based upon a major accident, hypothesized for purposes of site analysis or postulated from considerations of possible accidental events. These accidents have generally been assumed to result in substantial meltdown of the core with subsequent release into the containment of appreciable quantities of fission products.

(3) The kinds and quantities of radioactive materials expected to be produced in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in part 20 of this chapter;

(4) The design of the facility including:

(i) The principal design criteria for the facility. Appendix A to part 50 of this chapter, "General Design Criteria for Nuclear Power Plants," establishes minimum requirements for the principal design criteria for water-cooled nuclear power plants similar in design and location to plants for which construction permits have previously been issued by the Commission and provides guidance to applicants in establishing principal design criteria for other types of nuclear power units;

(ii) The design bases and the relation of the design bases to the principal design criteria;

(iii) Information relative to materials of construction, arrangement, and dimensions, sufficient to provide reasonable assurance that the design will conform to the design bases with adequate margin for safety.

- (5) An analysis and evaluation of the design and performance of structures, systems, and components with the objective of assessing the risk to public health and safety resulting from operation of the facility and including determination of the margins of safety during normal operations and transient conditions anticipated during the life of the facility, and the adequacy of structures, systems, and components provided for the prevention of accidents and the mitigation of the consequences of accidents. Analysis and evaluation of ECCS cooling performance and the need for high-point vents following postulated loss-of-coolant accidents shall be performed in accordance with the requirements of §§ 50.46 and 50.46a of this chapter;
- (6) A description and analysis of the fire protection design features for the reactor necessary to comply with 10 CFR part 50, appendix A, GDC 3, and § 50.48 of this chapter;
- (7) A description of protection provided against pressurized thermal shock events, including projected values of the reference temperature for reactor vessel beltline materials as defined in §§ 50.60 and 50.61(b)(1) and (b)(2) of this chapter;
- (8) An analysis and description of the equipment and systems for combustible gas control as required by § 50.44 of this chapter;
- (9) The coping analyses, and any design features necessary to address station blackout, as described in § 50.63 of this chapter;
- (10) A description of the program, and its implementation, required by § 50.49(a) of this chapter for the environmental qualification of electric equipment important to safety and the list of electric equipment important to safety that is required by 10 CFR 50.49(d);
- (11) A description of the program(s), and their implementation, necessary to ensure that the systems and components meet the requirements of the ASME Boiler and Pressure Vessel Code and the ASME Code for Operation and Maintenance of Nuclear Power Plants in accordance with 50.55a of this chapter;
- (12) A description of the primary containment leakage rate testing program, and its implementation, necessary to ensure that the containment meets the requirements of appendix J to 10 CFR part 50;
- (13) A description of the reactor vessel material surveillance program required by appendix H to 10 CFR part 50 and its implementation;
- (14) A description of the operator training program, and its implementation, necessary to meet the requirements of 10 CFR part 55;
- (15) A description of the program, and its implementation, for monitoring the effectiveness of maintenance necessary to meet the requirements of § 50.65 of this chapter;
- (16)(i) The information with respect to the design of equipment to maintain control over radioactive materials in gaseous and liquid effluents produced during normal reactor operations, as described in § 50.34a(d) of this chapter;
- (ii) A description of the process and effluent monitoring and sampling program required by appendix I to 10 CFR part 50 and its implementation.
- (17) The information with respect to compliance with technically relevant positions of the Three Mile Island requirements in § 50.34(f) of this chapter, with the exception of § 50.34(f)(1)(xii), (f)(2)(ix), (f)(2)(xxv), and (f)(3)(v);
- (18) If the applicant seeks to use risk-informed treatment of SSCs in accordance with § 50.69 of this chapter, the information required by § 50.69(b)(2) of this chapter;
- (19) Information necessary to demonstrate that the plant complies with the earthquake engineering criteria in 10 CFR part 50, appendix S;

(20) Proposed technical resolutions of those Unresolved Safety Issues and medium- and high-priority generic safety issues which are identified in the version of NUREG-0933 current on the date up to 6 months before the docket date of the application and which are technically relevant to the design;

(21) Emergency plans complying with the requirements of § 50.47 of this chapter, and 10 CFR part 50, appendix E;

(22)(i) All emergency plan certifications that have been obtained from the State and local governmental agencies with emergency planning responsibilities must state that:

(A) The proposed emergency plans are practicable;

(B) These agencies are committed to participating in any further development of the plans, including any required field demonstrations; and

(C) These agencies are committed to executing their responsibilities under the plans in the event of an emergency;

(ii) If certifications cannot be obtained after sustained, good faith efforts by the applicant, then the application must contain information, including a utility plan, sufficient to show that the proposed plans provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the site.

(23) [Reserved]

(24) If the application is for a nuclear power reactor design which differs significantly from light-water reactor designs that were licensed before 1997 or use simplified, inherent, passive, or other innovative means to accomplish their safety functions, the application must describe how the design meets the requirements in § 50.43(e) of this chapter;

(25) A description of the quality assurance program, applied to the design, and to be applied to the fabrication, construction, and testing, of the structures, systems, and components of the facility. Appendix B to 10 CFR part 50 sets forth the requirements for quality assurance programs for nuclear power plants. The description of the quality assurance program for a nuclear power plant must include a discussion of how the applicable requirements of appendix B to 10 CFR part 50 have been and will be satisfied, including a discussion of how the quality assurance program will be implemented;

(26) The applicant's organizational structure, allocations or responsibilities and authorities, and personnel qualifications requirements for operation;

(27) Managerial and administrative controls to be used to assure safe operation. Appendix B to 10 CFR part 50 sets forth the requirements for these controls for nuclear power plants. The information on the controls to be used for a nuclear power plant shall include a discussion of how the applicable requirements of appendix B to 10 CFR part 50 will be satisfied;

(28) Plans for preoperational testing and initial operations;

(29)(i) Plans for conduct of normal operations, including maintenance, surveillance, and periodic testing of structures, systems, and components;

(ii) Plans for coping with emergencies, other than the plans required by § 52.79(a)(21);

(30) Proposed technical specifications prepared in accordance with the requirements of §§ 50.36 and 50.36a of this chapter;

(31) For nuclear power plants to be operated on multi-unit sites, an evaluation of the potential hazards to the structures, systems, and components important to safety of operating units resulting from construction activities, as well as a description of the managerial and administrative controls to be used to provide assurance that the limiting conditions for operation are not exceeded as a result of construction activities at the multi-unit sites;

(32) The technical qualifications of the applicant to engage in the proposed activities in accordance with the regulations in this chapter;

(33) A description of the training program required by § 50.120 of this chapter and its implementation;

(34) A description and plans for implementation of an operator requalification program. The operator requalification program must as a minimum, meet the requirements for those programs contained in § 55.59 of this chapter;

(35)(i) A physical security plan, describing how the applicant will meet the requirements of 10 CFR part 73 (and 10 CFR part 11, if applicable, including the identification and description of jobs as required by § 11.11(a) of this chapter, at the proposed facility). The plan must list tests, inspections, audits, and other means to be used to demonstrate compliance with the requirements of 10 CFR parts 11 and 73, if applicable;

(ii) A description of the implementation of the physical security plan;

(36)(i) A safeguards contingency plan in accordance with the criteria set forth in appendix C to 10 CFR part 73. The safeguards contingency plan shall include plans for dealing with threats, thefts, and radiological sabotage, as defined in part 73 of this chapter, relating to the special nuclear material and nuclear facilities licensed under this chapter and in the applicant's possession and control. Each application for this type of license shall include the information contained in the applicant's safeguards contingency plan. n8 (Implementing procedures required for this plan need not be submitted for approval.)

n8 A physical security plan that contains all the information required in both § 73.55 of this chapter and appendix C to 10 CFR part 73 satisfies the requirement for a contingency plan.

(ii) A training and qualification plan in accordance with the criteria set forth in appendix B to 10 CFR part 73.

(iii) A cyber security plan in accordance with the criteria set forth in § 73.54 of this chapter;

(iv) A description of the implementation of the safeguards contingency plan, training and qualification plan, and cyber security plan; and

(v) Each applicant who prepares a physical security plan, a safeguards contingency plan, a training and qualification plan, or a cyber security plan, shall protect the plans and other related Safeguards Information against unauthorized disclosure in accordance with the requirements of § 73.21 of this chapter.

(37) The information necessary to demonstrate how operating experience insights have been incorporated into the plant design;

(38) For light-water reactor designs, a description and analysis of design features for the prevention and mitigation of severe accidents, e.g., challenges to containment integrity caused by core-concrete interaction, steam explosion, high-pressure core melt ejection, hydrogen combustion, and containment bypass;

(39) A description of the radiation protection program required by § 20.1101 of this chapter and its implementation.

(40) A description of the fire protection program required by § 50.48 of this chapter and its implementation.

(41) For applications for light-water-cooled nuclear power plant combined licenses, an evaluation of the facility against the Standard Review Plan (SRP) revision in effect 6 months before the docket date of the application. The evaluation required by this section shall include an identification and description of all differences in design features, analytical techniques, and procedural measures proposed for a facility and those corresponding features, techniques, and measures given in the SRP acceptance criteria. Where a difference exists, the evaluation shall discuss how the proposed alternative provides an acceptable method of complying with the Commission's regulations, or portions thereof, that underlie the corresponding SRP acceptance criteria. The SRP is not a substitute for the regulations, and compliance is not a re-

quirement;

(42) Information demonstrating how the applicant will comply with requirements for reduction of risk from anticipated transients without scram (ATWS) events in § 50.62 of this chapter;

(43) Information demonstrating how the applicant will comply with requirements for criticality accidents in § 50.68 of this chapter;

(44) A description of the fitness-for-duty program required by 10 CFR part 26 and its implementation.

(45) The information required by § 20.1406 of this chapter.

(46) A description of the plant-specific probabilistic risk assessment (PRA) and its results.

(47) For applications for combined licenses which are subject to 10 CFR 50.150(a), the information required by 10 CFR 50.150(b).

(b) If the combined license application references an early site permit, then the following requirements apply:

(1) The final safety analysis report need not contain information or analyses submitted to the Commission in connection with the early site permit, provided, however, that the final safety analysis report must either include or incorporate by reference the early site permit site safety analysis report and must contain, in addition to the information and analyses otherwise required, information sufficient to demonstrate that the design of the facility falls within the site characteristics and design parameters specified in the early site permit.

(2) If the final safety analysis report does not demonstrate that design of the facility falls within the site characteristics and design parameters, the application shall include a request for a variance that complies with the requirements of §§ 52.39 and 52.93.

(3) The final safety analysis report must demonstrate that all terms and conditions that have been included in the early site permit, other than those imposed under § 50.36b, will be satisfied by the date of issuance of the combined license. Any terms or conditions of the early site permit that could not be met by the time of issuance of the combined license, must be set forth as terms or conditions of the combined license.

(4) If the early site permit approves complete and integrated emergency plans, or major features of emergency plans, then the final safety analysis report must include any new or additional information that updates and corrects the information that was provided under § 52.17(b), and discuss whether the new or additional information materially changes the bases for compliance with the applicable requirements. The application must identify changes to the emergency plans or major features of emergency plans that have been incorporated into the proposed facility emergency plans and that constitute or would constitute a decrease in effectiveness under § 50.54(q) of this chapter.

(5) If complete and integrated emergency plans are approved as part of the early site permit, new certifications meeting the requirements of paragraph (a)(22) of this section are not required.

(c) If the combined license application references a standard design approval, then the following requirements apply:

(1) The final safety analysis report need not contain information or analyses submitted to the Commission in connection with the design approval, provided, however, that the final safety analysis report must either include or incorporate by reference the standard design approval final safety analysis report and must contain, in addition to the information and analyses otherwise required, information sufficient to demonstrate that the characteristics of the site fall within the site parameters specified in the design approval. In addition, the plant-specific PRA information must use the PRA information for the design approval and must be updated to account for site-specific design information and any design changes or departures.

(2) The final safety analysis report must demonstrate that all terms and conditions that have been included in the final

design approval will be satisfied by the date of issuance of the combined license.

(d) If the combined license application references a standard design certification, then the following requirements apply:

(1) The final safety analysis report need not contain information or analyses submitted to the Commission in connection with the design certification, provided, however, that the final safety analysis report must either include or incorporate by reference the standard design certification final safety analysis report and must contain, in addition to the information and analyses otherwise required, information sufficient to demonstrate that the site characteristics fall within the site parameters specified in the design certification. In addition, the plant-specific PRA information must use the PRA information for the design certification and must be updated to account for site-specific design information and any design changes or departures.

(2) The final safety analysis report must demonstrate that the interface requirements established for the design under § 52.47 have been met.

(3) The final safety analysis report must demonstrate that all requirements and restrictions set forth in the referenced design certification rule, other than those imposed under § 50.36b, must be satisfied by the date of issuance of the combined license. Any requirements and restrictions set forth in the referenced design certification rule that could not be satisfied by the time of issuance of the combined license, must be set forth as terms or conditions of the combined license.

(e) If the combined license application references the use of one or more manufactured nuclear power reactors licensed under subpart F of this part, then the following requirements apply:

(1) The final safety analysis report need not contain information or analyses submitted to the Commission in connection with the manufacturing license, provided, however, that the final safety analysis report must either include or incorporate by reference the manufacturing license final safety analysis report and must contain, in addition to the information and analyses otherwise required, information sufficient to demonstrate that the site characteristics fall within the site parameters specified in the manufacturing license. In addition, the plant-specific PRA information must use the PRA information for the manufactured reactor and must be updated to account for site-specific design information and any design changes or departures.

(2) The final safety analysis report must demonstrate that the interface requirements established for the design have been met.

(3) The final safety analysis report must demonstrate that all terms and conditions that have been included in the manufacturing license, other than those imposed under § 50.36b, will be satisfied by the date of issuance of the combined license. Any terms or conditions of the manufacturing license that could not be met by the time of issuance of the combined license, must be set forth as terms or conditions of the combined license.

(f) Each applicant for a combined license under this subpart shall protect Safeguards Information against unauthorized disclosure in accordance with the requirements in §§ 73.21 and 73.22 of this chapter, as applicable.





## **10 C.F.R. §52.83**



\*\*\* This section is current through the July 26, 2012 \*\*\*  
\*\*\* issue of the Federal Register \*\*\*

TITLE 10 -- ENERGY  
CHAPTER I -- NUCLEAR REGULATORY COMMISSION  
PART 52 -- LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS  
SUBPART C -- COMBINED LICENSES

*10 CFR 52.83*

§ 52.83 Finality of referenced NRC approvals; partial initial decision on site suitability.

(a) If the application for a combined license under this subpart references an early site permit, design certification rule, standard design approval, or manufacturing license, the scope and nature of matters resolved for the application and any combined license issued are governed by the relevant provisions addressing finality, including §§ 52.39, 52.63, 52.98, 52.145, and 52.171.

(b) While a partial decision on site suitability is in effect under 10 CFR 2.617(b)(2), the scope and nature of matters resolved in the proceeding are governed by the finality provisions in 10 CFR 2.629.



## **10 C.F.R. §52.97**



\*\*\* This section is current through the July 26, 2012 \*\*\*  
\*\*\* issue of the Federal Register \*\*\*

TITLE 10 -- ENERGY  
CHAPTER I -- NUCLEAR REGULATORY COMMISSION  
PART 52 -- LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS  
SUBPART C -- COMBINED LICENSES

*10 CFR 52.97*

§ 52.97 Issuance of combined licenses.

(a)(1) After conducting a hearing in accordance with § 52.85 and receiving the report submitted by the ACRS, the Commission may issue a combined license if the Commission finds that:

(i) The applicable standards and requirements of the Act and the Commission's regulations have been met;

(ii) Any required notifications to other agencies or bodies have been duly made;

(iii) There is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of the Act, and the Commission's regulations.

(iv) The applicant is technically and financially qualified to engage in the activities authorized; and

(v) Issuance of the license will not be inimical to the common defense and security or to the health and safety of the public; and

(vi) The findings required by subpart A of part 51 of this chapter have been made.

(2) The Commission may also find, at the time it issues the combined license, that certain acceptance criteria in one or more of the inspections, tests, analyses, and acceptance criteria (ITAAC) in a referenced early site permit or standard design certification have been met. This finding will finally resolve that those acceptance criteria have been met, those acceptance criteria will be deemed to be excluded from the combined license, and findings under § 52.103(g) with respect to those acceptance criteria are unnecessary.

(b) The Commission shall identify within the combined license the inspections, tests, and analyses, including those applicable to emergency planning, that the licensee shall perform, and the acceptance criteria that, if met, are necessary and sufficient to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of the Act, and the Commission's rules and regulations.

(c) A combined license shall contain the terms and conditions, including technical specifications, as the Commission deems necessary and appropriate.





## **40 C.F.R. §1502.22**



\*\*\* This section is current through the July 26, 2012 \*\*\*  
\*\*\* issue of the Federal Register \*\*\*

TITLE 40 -- PROTECTION OF ENVIRONMENT  
CHAPTER V -- COUNCIL ON ENVIRONMENTAL QUALITY  
PART 1502 -- ENVIRONMENTAL IMPACT STATEMENT

*40 CFR 1502.22*

§ 1502.22 Incomplete or unavailable information.

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement:

(1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and (4) the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

(c) The amended regulation will be applicable to all environmental impact statements for which a Notice of Intent (40 CFR 1508.22) is published in the Federal Register on or after May 27, 1986. For environmental impact statements in progress, agencies may choose to comply with the requirements of either the original or amended regulation.



## **40 C.F.R. § 1506.6**



\*\*\* This section is current through the July 26, 2012 \*\*\*  
\*\*\* issue of the Federal Register \*\*\*

TITLE 40 -- PROTECTION OF ENVIRONMENT  
CHAPTER V -- COUNCIL ON ENVIRONMENTAL QUALITY  
PART 1506 -- OTHER REQUIREMENTS OF NEPA

*40 CFR 1506.6*

§ 1506.6 Public involvement.

Agencies shall:

- (a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.
- (b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.
  - (1) In all cases the agency shall mail notice to those who have requested it on an individual action.
  - (2) In the case of an action with effects of national concern notice shall include publication in the Federal Register and notice by mail to national organizations reasonably expected to be interested in the matter and may include listing in the 102 Monitor. An agency engaged in rulemaking may provide notice by mail to national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.
  - (3) In the case of an action with effects primarily of local concern the notice may include:
    - (i) Notice to State and areawide clearinghouses pursuant to OMB Circular A-95 (Revised).
    - (ii) Notice to Indian tribes when effects may occur on reservations.
    - (iii) Following the affected State's public notice procedures for comparable actions.
    - (iv) Publication in local newspapers (in papers of general circulation rather than legal papers).
    - (v) Notice through other local media.
    - (vi) Notice to potentially interested community organizations including small business associations.
    - (vii) Publication in newsletters that may be expected to reach potentially interested persons.
    - (viii) Direct mailing to owners and occupants of nearby or affected property.
    - (ix) Posting of notice on and off site in the area where the action is to be located.
  - (c) Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:
    - (1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.
    - (2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft environmental impact statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information

for the draft environmental impact statement).

(d) Solicit appropriate information from the public.

(e) Explain in its procedures where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.

(f) Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other Federal agencies, including the Council.



**AP1000 Design Certification**  
**71 Fed. Reg. 4464-01**



**§ 319.56–2 [Amended]**

■ 30. In § 319.56–2, paragraph (k) is amended by removing the words “11 species of fruit flies and one species of seed weevil” and adding the words “plant pests” in their place.

■ 31. Section 319.74–2 is amended as follows by redesignating paragraph (d) as paragraph (e) and by adding a new paragraph (d) to read as follows:

**§ 319.74–2 Conditions governing the entry of cut flowers.**

\* \* \* \* \*

(d) *Irradiation.* Cut flowers and foliage that are required under this part to be treated or subjected to inspection to control one or more of the plant pests listed in § 305.31(a) of this chapter may instead be treated with irradiation. Commodities treated with irradiation for plant pests listed in § 305.31(a) must be irradiated at the doses listed in § 305.31(a), and the irradiation treatment must be conducted in accordance with the other requirements of § 305.34 of this chapter. There is a possibility that some cut flowers could be damaged by such irradiation.

\* \* \* \* \*

Done in Washington, DC, this 20th day of January 2006.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 06–746 Filed 1–26–06; 8:45 am]

**BILLING CODE 3410–34–P**

**NUCLEAR REGULATORY COMMISSION****10 CFR Part 52**

**RIN 3150–AH56**

**AP1000 Design Certification**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC or Commission) is amending its regulations to certify the AP1000 standard plant design. This action is necessary so that applicants or licensees intending to construct and operate an AP1000 design may do so by referencing this regulation [AP1000 design certification rule (DCR)]. The applicant for certification of the AP1000 design was Westinghouse Electric Company, LLC (Westinghouse).

**DATES:** *Effective Date:* The effective date of this rule is February 27, 2006. The incorporation by reference of certain material specified in this regulation is approved by the Director of the Office

of the Federal Register as of February 27, 2006.

**FOR FURTHER INFORMATION CONTACT:**

Lauren Quinones-Navarro or Jerry N. Wilson, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–2007 or (301) 415–3145; e-mail: *lnq@nrc.gov* or *jnw@nrc.gov*.

**SUPPLEMENTARY INFORMATION:****I. Background.****II. Comment Analysis****A. Design Control Document****B. Design Certification Rule****III. Section-by-Section Analysis****A. Introduction (Section I)****B. Definitions (Section II)****C. Scope and Contents (Section III)****D. Additional Requirements and****Restrictions (Section IV)****E. Applicable Regulations (Section V)****F. Issue Resolution (Section VI)****G. Duration of this Appendix (Section VII)****H. Processes for Changes and Departures (Section VIII)****I. Inspections, Tests, Analyses, and Acceptance Criteria (Section IX)****J. Records and Reporting (Section X)****IV. Availability of Documents****V. Voluntary Consensus Standards****VI. Finding of No Significant Environmental****Impact: Availability****VII. Paperwork Reduction Act Statement****VIII. Regulatory Analysis****IX. Regulatory Flexibility Certification****X. Backfit Analysis****XI. Congressional Review Act****I. Background**

Subpart B of 10 CFR part 52 sets forth the process for obtaining standard design certifications. On March 28, 2002 (67 FR 20845; April 26, 2002), Westinghouse tendered its application for certification of the AP1000 standard plant design with the NRC. Westinghouse submitted this application in accordance with subpart B and appendix O of 10 CFR part 52. The NRC formally accepted the application as a docketed application for design certification (Docket No. 52–006) on June 25, 2002 (67 FR 43690; June 28, 2002). The pre-application information submitted before the NRC formally accepted the application can be found in the NRC’s Agencywide Documents Access and Management System (ADAMS) under Docket Number PROJ0711 (Project No. 711).

The NRC staff issued a final safety evaluation report (FSER) for the AP1000 design in September 2004 (NUREG–1793). The FSER provides the bases for issuance of a final design approval (FDA) under appendix O to part 52, which is a prerequisite to a design certification. The FDA for the AP1000 design was issued on September 13,

2004, and published in the **Federal Register** on September 17, 2004 (69 FR 56101). A proposed rule to certify the AP1000 was published on April 18, 2005 (70 FR 20062).

Subsequently, Westinghouse submitted editorial and minor technical changes and clarifications to the inspections, tests, analyses, and acceptance criteria (ITAAC) in revision 15 to the design control document (DCD). The NRC staff evaluated these changes in a supplement to the FSER (NUREG–1793, Supplement No. 1). Supplement No. 1 is being made available to the public as part of this rulemaking. The FSER and Supplement No. 1 provide the bases for the Commission’s approval of the AP1000 standard plant design. An FDA, which incorporates the changes to the DCD, will be issued to supersede the current FDA after issuance of this final design certification rule.

**II. Comment Analysis**

The period for submitting comments on the proposed DCR, AP1000 DCD, or draft environmental assessment (EA) expired on July 5, 2005. The NRC received three letters from two private citizens and one letter from the Nuclear Energy Institute (NEI). The comments addressed three categories of information: Environmental Assessment (EA), Design Control Document, and Design Certification Rule. The responses to the comments on the EA are discussed in section 7.0 of the EA (ML053630176). Responses to the comments in the second and third categories are discussed below.

**A. Design Control Document (DCD)**

*Comment summary.* There is an over-reliance on passive systems in the AP1000.

*Response.* The NRC disagrees with this comment. The NRC required tests of the new passive safety systems to demonstrate that they will perform as predicted in the safety analysis (see Chapter 21 of the AP1000 FSER). The NRC also required higher availability for certain active backup systems to compensate for any remaining uncertainties in the performance of the passive safety systems (see Chapter 22 of the AP1000 FSER). As a result of these reviews, the NRC concluded that the use of passive safety systems in the AP1000 design is acceptable.

*Comment Summary.* The AP1000 is an unnecessary and unsafe variation on AP600.

*Response.* The NRC disagrees with the comment. The NRC has determined that the AP1000 design can be built and operated safely (see AP1000 FSER). The

NRC does not determine which designs are necessary for future deployment.

*Comment Summary.* The AP1000 DCD referenced in the proposed rule does not meet the requirement of 10 CFR part 52 that the plant design be complete except for site-specific elements and other specific exemptions.

*Response.* The NRC disagrees with this comment. The requirement for a complete scope of design [10 CFR 52.47(b)(2)(i)(A)(4)] was met by the applicant (see discussion in section 1.2.1 of AP1000 FSER). The comment appears to be directed at the requirement for an application to contain a sufficient level of design information for the Commission to reach a conclusion on all safety questions associated with the design [10 CFR 52.47(a)(2)], which was also met by the applicant (see discussion in section 1.5 of AP1000 FSER).

*Comment Summary.* The appropriateness of the process used to derive the AP1000 design from the AP600 design has not been given sufficient attention in the NRC's review.

*Response.* The NRC disagrees with this comment, which appears to apply to the NRC's review of the applicant's quality assurance (QA) program. In its application for design certification of the AP1000 plant, Westinghouse stated that a continuous QA program spanning the AP600 design and the AP1000 design has been used. Since March 31, 1996, activities affecting the quality of items and services for the AP1000 project during design, procurement, fabrication, inspection, and/or testing have been performed under the quality plan described in "Westinghouse Energy Systems Business Unit—Quality Management System." The Quality Management System (QMS) establishes design control measures for preparing, reviewing, and approving design documentation for safety-related structures, systems, and components (SSCs). As documented in an NRC evaluation letter, dated February 23, 1996, from S. Black (NRC) to N.J. Liparulo, the Westinghouse QMS was reviewed by the NRC and found to meet the requirements of 10 CFR part 50, appendix B. Subsequent revisions to the QMS have also been reviewed by the NRC and found to be acceptable. To provide additional assurance that Westinghouse implemented the measures described in the QMS, the NRC staff performed a QA implementation inspection at the Westinghouse engineering offices in Monroeville, Pennsylvania, which was documented in NRC Inspection Report No. 99900404/03–01, dated November 4, 2003 (ADAMS Accession No.

ML033090510). Therefore, the NRC concludes that the applicant's QA program for the AP1000 design was acceptable.

*Comment Summary.* The decision by the NRC not to require Westinghouse to build and test a prototype for the automatic depressurization system (ADS) 4th stage squib valve was made under pressure of the accelerated AP1000 schedule.

*Response.* The NRC disagrees that the AP1000 schedule affected the decision not to require Westinghouse to build and test a prototype for the ADS 4th stage squib valve. The need for a prototype test was evaluated by the NRC staff during the AP1000 design review. Also, the ability to design and build the ADS valve for AP1000 was discussed with the Advisory Committee on Reactor Safeguards (ACRS) at its future plant subcommittee meeting on July 17–18, 2003. In addition, in a letter to ACRS dated May 18, 2004, the NRC staff stated that the ADS–4 squib valves will be designed, constructed, and tested under Section III of the Boiler and Pressure Vessel Code promulgated by the American Society of Mechanical Engineers and are actuated by redundant and diverse instrumentation and control systems. The staff also performed a sensitivity study by increasing the failure probability and the common-cause failure probability of the ADS–4 squib valves by an order of magnitude. This sensitivity study indicated that the CDF increased by only a factor of three (to  $6 \times 10^{-7}$ /year) and was not large enough to impact the probabilistic risk assessment (PRA) conclusions and insights about the AP1000 design.

*Comment Summary.* The effect of heat of solar radiation on the performance of the AP1000 passive containment cooling system (PCS) has not been resolved, and geographical latitude ought to be a site parameter, unless it can be shown that the PCS is effective at all geographical latitudes, even when heat of solar radiation is taken into account.

*Response.* The NRC disagrees with these comments. The site parameters for the AP1000 design include minimum and maximum air temperatures (see DCD Table 2–1). The safety maximum temperature is 115 °F, which is based on historical site data and excludes peaks of less than 2-hour durations.

The operational limits for the AP1000 containment include a technical specification (TS) limit on the temperature of the air inside containment, TS 3.6.5, "Containment Air Temperature," of less than or equal to 120 °F. In addition, there is a limit

on the water temperature in the PCS storage tank specified in TS 3.6.6, "Passive Containment Cooling System—Operating," of greater than or equal to –40 °F and less than or equal to 120 °F. If the water temperature is at or below 50 °F, or at or above 100 °F, the surveillance frequency to check the temperature is reduced from 7 days to 24 hours. The operational limits and the site parameters provide reasonable assurance that the AP1000 can be operated without undue risk to the public health and safety. Conservative evaluations of the potential effect of solar radiation on the operation and performance of the AP1000 PCS show that the AP1000 TS provide reasonable assurance that off-normal conditions can be detected and appropriate actions taken to preclude operations outside the current design-base assumptions. Based on the estimated time needed to exceed the current operational temperature limits (10 days of uninterrupted extreme environmental conditions), it is reasonable to conclude that the AP1000 operational limits will not be exceeded even for sites with high solar radiation. In the unlikely event that the shield building might heat up, a containment response analysis showed the pressure increase to be small, 0.75 pounds per square inch (psi), and based on the current margin of 1.2 psi (DCD Table 6.2.1.1–1), the design pressure limit of 73.7 pounds per square inch absolute (psia) would not be exceeded. Therefore, the effect of heat of solar radiation on the performance of the PCS has been resolved.

*Comment Summary.* The accelerated schedule for the AP1000 led to cutting regulatory corners and was further accelerated by granting the FDA before the FSER was made available to the public.

*Response.* The NRC disagrees with this comment. In a letter to Mr. W.E. Cummins (Westinghouse), dated July 12, 2002, it is true that the NRC provided an expected schedule for the AP1000 review, which was significantly shorter than previous DCRs. However, the shorter schedule was due to efficiencies that the NRC expected to achieve as a result of the similarities between the previously-approved AP600 design and the AP1000 design. Also, the AP1000 FSER was made available to the public on September 20, 2004, the same day that the FDA was made available to the public.

#### B. Design Certification Rule

It is the Commission's goal to maintain as much consistency as possible in the rule language for all of the DCRs. Many of the following

comments from NEI appear to be applicable to all of the DCRs but some repeat comments NEI submitted previously during the 2003 proposed rule to amend 10 CFR part 52 (68 FR 40025; July 3, 2003).

*Comment Summary.* NEI recommends that Section III.B of the Supplementary Information (70 FR 20064) be revised to delete the phrase “not just incorporate by reference.”

*Response.* The NRC disagrees with this request. The NRC does agree that the plant-specific DCD should be part of the final safety analysis report (FSAR) for a combined license (COL) application. The NRC believes that the generic DCD should also be part of the FSAR, not just incorporated by reference, in order to facilitate the NRC staff's review of any departures or exemptions. However, any changes made to existing DCRs if part 52 is revised would also be made to the AP1000 DCR.

*Comment Summary.* NEI recommends clarification of the review status of “operational requirements” in Section III.F of the Supplementary Information (70 FR 20067).

*Response.* The NRC agrees that the special backfit provisions of 10 CFR 52.63 do not apply to operational requirements in the DCD. However, the NRC believes that the discussion in Section III.F of the Supplementary Information section of the proposed rule document accurately states the review status of operational requirements and does not need to be revised.

*Comment Summary.* NEI recommends modification of the definition of generic TS in section II.B of the AP1000 DCR.

*Response.* The NRC disagrees with this comment. The NRC stated in the Supplementary Information (70 FR 20063) that the values in brackets are neither part of the AP1000 DCR nor are they binding. The NRC believes that amending the definition of generic TS is not necessary and also wants to maintain consistent rule language for all DCRs.

*Comment Summary.* NEI recommends replacement of the term “investment protection” in section II.E of the AP1000 DCR and elsewhere in the DCD by the term “non-safety-related severe accident equipment.” In addition, NEI recommends that the AP1000 DCR and Supplementary Information be revised so that bracketed information in the investment protection short-term availability controls will be treated like bracketed information in generic TS.

*Response.* The NRC disagrees with NEI's request to change this terminology. Use of the term “investment protection short-term

availability controls” was requested by the applicant (Westinghouse Electric Company, LLC) and was also used in the AP600 DCR. Furthermore, the origin of investment protection short-term availability controls comes from implementing the regulatory treatment of non-safety systems process, which typically results in requirements to achieve higher reliability for certain active, non-safety systems. These systems are not limited to severe accident design features. Therefore, even if the NRC agreed to a generic change to the term “investment protection,” the proposed term “non-safety-related severe accident equipment” would not be an acceptable replacement.

The NRC agrees that the bracketed values in the investment protection short-term availability controls have the same status as the bracketed values in the generic TS. As a result, the NRC refers to the availability controls in section III.H of the Supplementary Information in this **Federal Register** notice.

*Comment Summary.* NEI recommends that the phrase “or licensees” be deleted from the rule language in section VIII.C.2 of the AP1000 DCR.

*Response.* The NRC agrees with this comment and section VIII.C.2 of the AP1000 DCR has been amended as suggested by NEI. The Commission may consider amending the DCRs to adopt the language recommended by NEI if 10 CFR part 52 is revised.

*Comment Summary.* NEI recommends amending the rule language in section VIII.C.6 of the AP1000 DCR to delete the requirement that changes to the plant-specific TS be treated as license amendments.

*Response.* The NRC disagrees with this request. The requirement that changes to the plant-specific TS be treated as license amendments is correct. If the Commission decides to clarify this issue for the DCRs in any potential revision to 10 CFR part 52, the NRC will also clarify the AP1000 DCR accordingly as part of that rulemaking.

*Comment Summary.* NEI recommends amending the rule language in section IX.B.1 of the AP1000 DCR to restore the phrase “based solely thereon.”

*Response.* The NRC agrees to amend section IX.B.1 of the AP1000 DCR, in order to make all of the DCRs consistent. However, the NRC notes that inclusion of the phrase “based solely thereon,” does not change the meaning of section IX.B.1. The determination of inspection, test, analysis, and acceptance criteria (ITAAC) completion will always be based on information that is material to the acceptance criteria.

*Comment Summary.* NEI recommends amending the rule language in section X.A.1 of the AP1000 DCR to require the design certification applicant to include all generic changes to the generic TS and other operational requirements in the generic DCD.

*Response.* The NRC agrees with this comment, section X.A.1 of the AP1000 DCR has been amended as suggested by NEI. The Commission may consider amending the DCRs to adopt the language recommended by NEI if 10 CFR part 52 is revised.

*Comment Summary.* NEI recommends that sections IV.A.2 and IV.A.3 of the AP1000 DCR be amended to be consistent with respect to inclusion of information in the plant-specific DCD or explain the difference between the terms “include” and “physically include” in section IV.A (70 FR 20076).

*Response.* The NRC agrees that use of the terms “include” and “physically include” in section IV.A of the AP1000 DCR should be clarified. The Commission may consider amending all of the DCRs to clarify this issue if 10 CFR part 52 is revised.

*Comment Summary.* NEI recommends amending the definition of Tier 2 in section II.E.1 of the AP1000 DCR to exclude the design-specific PRA and the evaluation of SAMDAs.

*Response.* The NRC agrees with this comment, section II.E.1 of the AP1000 DCR has been amended as suggested by NEI. The NRC notes that NEI submitted the same comment during the 2003 proposed rule to amend 10 CFR part 52. The Commission may consider amending the DCRs to adopt the language recommended by NEI if 10 CFR part 52 is revised.

*Comment Summary.* NEI recommends amending the rule language in section III.E of the AP1000 DCR to use the terminology for “site characteristics” consistently.

*Response.* The NRC agrees with this comment, section III.E of the AP1000 DCR has been amended to be consistent with the other DCRs in the proposed part 52 rule. The NRC notes that NEI submitted the same comment during the 2003 proposed rule to amend 10 CFR part 52.

*Comment Summary.* NEI recommends clarifying the rule language in section IV.A.2 of the AP1000 DCR regarding “same” information and “generic DCD.”

*Response.* The NRC agrees with this comment, section IV.A.2 of the AP1000 DCR has been amended to be consistent with the other DCRs in the proposed part 52 rule. The NRC notes that NEI submitted the same comment during the 2003 proposed rule to amend 10 CFR part 52.

*Comment Summary.* NEI recommends amending section VIII.B.6.a of the AP1000 DCR to be consistent with section VI.B.5 regarding plant-specific departures.

*Response.* The NRC disagrees with this request. It was determined during the first two DCRs that departures from Tier 2\* information would not receive finality or be treated as a resolved issue within the meaning of section VI of the DCR. The NRC notes that NEI submitted the same comment during the 2003 proposed rule to amend 10 CFR part 52. If the Commission decides to adopt NEI's proposed language for the DCRs in any potential revision to 10 CFR part 52, the NRC will also amend the AP1000 DCR accordingly as part of that rulemaking.

*Comment Summary.* NEI recommends amending section VIII.C.3 of the AP1000 DCR to require the NRC to meet the backfit requirements of 10 CFR 50.109 in addition to the special circumstances in 10 CFR 2.758(b) for plant-specific departures from operational requirements.

*Response.* The NRC disagrees with this request. In the first two DCRs, the Commission decided on different standards for changes made under section VIII.C of the DCRs (see the discussion at 62 FR 25800; May 12, 1997). The NRC notes that NEI submitted the same comment during the 2003 proposed rule to amend 10 CFR part 52. If the Commission decides to adopt NEI's proposed language for the DCRs in any potential revision to 10 CFR part 52, the NRC will also amend the AP1000 DCR accordingly as part of that rulemaking.

*Comment Summary.* NEI recommends amending section VIII.C.4 of the AP1000 DCR to revise the standards for making changes to operational requirements.

*Response.* The NRC disagrees with this request. In the first two DCRs, the Commission decided on different standards for changes made under section VIII.C of the DCRs (see the discussion at 62 FR 25800; May 12, 1997). In addition, the Commission determined that exemptions from operational requirements would not receive finality or be treated as a resolved issue within the meaning of section VI of the DCR. The NRC notes that NEI submitted the same comment during the 2003 proposed rule to amend 10 CFR part 52. If the Commission decides to adopt NEI's proposed language for the DCRs in any potential revision to 10 CFR part 52, the NRC will also amend the AP1000 DCR accordingly as part of that rulemaking.

*Comment Summary.* NEI recommends amending section IX.B.1 of the AP1000

DCR to specify the type of action to be performed by the NRC staff regarding ITAAC.

*Response.* The NRC disagrees with this request. Individual DCRs should not address the scope of the NRC staff's activities with respect to ITAAC verification. This is a generic matter that, if it is to be addressed in a rulemaking, is more appropriate for inclusion in subpart C of part 52 dealing generally with combined licenses.

The NRC notes that NEI submitted the same comment during the 2003 proposed rule to amend 10 CFR part 52. If the Commission decides to adopt NEI's proposed language for the DCRs in any potential revision to 10 CFR part 52, the NRC will also amend the AP1000 DCR accordingly as part of that rulemaking.

*Comment Summary.* NEI recommends amending section IX.B.3 of the AP1000 DCR to clarify the rule language.

*Response.* The NRC disagrees with this editorial request and has decided to maintain the original rule language for this provision. The NRC notes that NEI submitted the same comment during the 2003 proposed rule to amend 10 CFR part 52. If the Commission decides to adopt NEI's proposed language for the DCRs in any potential revision to 10 CFR part 52, the NRC will also amend the AP1000 DCR accordingly as part of that rulemaking.

*Comment Summary.* NEI recommends amending sections X.B.1 and X.B.3 of the AP1000 DCR to clarify the rule language regarding DCDs.

*Response.* The NRC agrees with this comment and section X.B of the AP1000 DCR has been amended to clarify the language. The NRC notes that NEI submitted the same comment during the 2003 proposed rule to amend 10 CFR part 52. The Commission may consider amending the existing DCRs in any potential revision to 10 CFR part 52.

### III. Section-by-Section Analysis

The following discussion sets forth the purpose and key aspects of each section and paragraph of the final AP1000 DCR. All section and paragraph references are to the provisions in appendix D to 10 CFR part 52. The final DCR for the AP1000 standard plant design is nearly identical to the AP600 DCR, which the NRC previously codified in 10 CFR part 52, appendix C (Design Certification Rule for the AP600 Design, 64 FR 72015, December 23, 1999). Many of the procedural issues and their resolutions for the AP600 DCR, as well as the initial two DCRs for the ABWR and ABB-CE System 80+, (e.g., the two-tier structure, Tier 2\*, the scope of issue resolution) were

developed after extensive public discussions with stakeholders, including Westinghouse. Also, Westinghouse requested that policy resolutions for the AP600 design review be applied to the AP1000. Accordingly, the NRC has modeled the AP1000 DCR on the existing DCRs, with certain departures where necessary, to account for differences in the AP1000 design documentation, design features, and environmental assessment (including severe accident mitigation design alternatives (SAMDAs)).

#### A. Introduction

The purpose of section I of appendix D to 10 CFR part 52 (this appendix) is to identify the standard plant design that is approved by this DCR, and the applicant for certification of the standard design. Identification of the design certification applicant is necessary to implement this appendix, for two reasons. First, the implementation of 10 CFR 52.63(c) depends on whether an applicant for a COL contracts with the design certification applicant to provide the generic DCD and supporting design information. If the COL applicant does not use the design certification applicant to provide this information, then the COL applicant must meet the requirements in 10 CFR 52.63(c). Also, paragraph X.A.1 of this appendix requires the design certification applicant to maintain the generic DCD throughout the time this appendix may be referenced.

#### B. Definitions

During development of the first two DCRs, the Commission decided that there would be both generic (master) DCDs maintained by the NRC and the design certification applicant, as well as individual plant-specific DCDs maintained by each applicant and licensee that reference this appendix. This distinction is necessary in order to specify the relevant plant-specific requirements to applicants and licensees referencing the appendix. The master DCDs would include generic changes to the version of the DCD approved in this design certification rulemaking. These changes would occur as the result of generic rulemaking by the Commission, under the change criteria in section VIII of this appendix. The Commission also requires each applicant and licensee referencing this appendix to submit and maintain a plant-specific DCD.

This plant-specific DCD would contain (not just incorporate by reference) the information in the generic DCD. The plant-specific DCD would be

updated as necessary to reflect the generic changes to the DCD that the Commission may adopt through rulemaking, plant-specific departures from the generic DCD that the Commission imposed on the licensee by order, and any plant-specific departures that the licensee chooses to make in accordance with the relevant processes in section VIII of this appendix. Thus, the plant-specific DCD would function like an updated FSAR because it would provide the most complete and accurate information on a plant's licensing basis for that part of the plant within the scope of this appendix. Therefore, this appendix would define both a generic DCD and a plant-specific DCD.

Also, the Commission decided to treat the TS in section 16.1 of the generic DCD as a special category of information and to designate them as generic TS in order to facilitate the special treatment of this information under this appendix. A COL applicant must submit plant-specific TS that consist of the generic TS, which may be modified under paragraph VIII.C of this appendix, and the remaining plant-specific information needed to complete the TS. The FSAR that is required by 10 CFR 52.79(b) will consist of the plant-specific DCD, the site-specific portion of the FSAR, and the plant-specific TS.

The terms Tier 1, Tier 2, Tier 2\*, and COL action items (license information) are defined in this appendix because these concepts were not envisioned when 10 CFR part 52 was developed. The design certification applicants and the NRC used these terms in implementing the two-tiered rule structure that was proposed by representatives of the nuclear industry after issuance of 10 CFR part 52. Therefore, appropriate definitions for these additional terms are included in this appendix. The nuclear industry representatives requested a two-tiered structure for the DCRs to achieve issue preclusion for a greater amount of information than was originally planned for the DCRs, while retaining flexibility for design implementation. The Commission approved the use of a two-tiered rule structure in its staff requirements memorandum (SRM), dated February 14, 1991, on SECY-90-377, "Requirements for Design Certification Under 10 CFR Part 52," dated November 8, 1990. This document and others are available in the Regulatory History of Design Certification (see section IV, Availability of Documents, of this Statement of Consideration (SOC)).

The Tier 1 portion of the design-related information contained in the DCD is certified by this appendix and,

therefore, is subject to the special backfit provisions in paragraph VIII.A of this appendix. An applicant who references this appendix is required to incorporate by reference and comply with Tier 1, under paragraphs III.B and IV.A.1 of this appendix. This information consists of an introduction to Tier 1, the system based and non-system based design descriptions and corresponding ITAAC, significant interface requirements, and significant site parameters for the design. The design descriptions, interface requirements, and site parameters in Tier 1 were derived from Tier 2, but may be more general than the Tier 2 information. The NRC staff's evaluation of the Tier 1 information is provided in section 14.3 of the FSER. Changes to or departures from the Tier 1 information must comply with section VIII.A of this appendix.

The Tier 1 design descriptions serve as commitments for the lifetime of a facility referencing the design certification. The ITAAC verifies that the as-built facility conforms with the approved design and applicable regulations. Under 10 CFR 52.103(g), the Commission must find that the acceptance criteria in the ITAAC are met before authorizing operation. After the Commission has made the finding required by 10 CFR 52.103(g), the ITAAC do not constitute regulatory requirements for licensees or for renewal of the COL. However, subsequent modifications to the facility must comply with the design descriptions in the plant-specific DCD unless changes are made under the change process in section VIII of this appendix. The Tier 1 interface requirements are the most significant of the interface requirements for systems that are wholly or partially outside the scope of the standard design. Tier 1 interface requirements were submitted in response to 10 CFR 52.47(a)(1)(vii) and must be met by the site-specific design features of a facility that references this appendix. An application that references this appendix must demonstrate that the site parameters (both Tier 1 and Tier 2) are met at the proposed site (refer to paragraph III.D of this SOC).

Tier 2 is the portion of the design-related information contained in the DCD that is approved by this appendix but not certified. Tier 2 information is subject to the backfit provisions in paragraph VIII.B of this appendix. Tier 2 includes the information required by 10 CFR 52.47 (with the exception of generic TS, conceptual design information, and the evaluation of SAMDAs) and the supporting

information on inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met. As with Tier 1, paragraphs III.B and IV.A.1 of this appendix require an applicant who references this appendix to incorporate Tier 2 by reference and to comply with Tier 2, except for the COL action items, including the investment protection short-term availability controls in section 16.3 of the generic DCD. The definition of Tier 2 makes clear that Tier 2 information has been determined by the Commission, by virtue of its inclusion in this appendix and its designation as Tier 2 information, to be an approved sufficient method for meeting Tier 1 requirements. However, there may be other acceptable ways of complying with Tier 1. The appropriate criteria for departing from Tier 2 information are specified in paragraph VIII.B of this appendix. Departures from Tier 2 do not negate the requirement in paragraph III.B to reference Tier 2.

A definition of "combined license action items" (COL information), which is part of the Tier 2 information, has been added to clarify that COL applicants who reference this appendix are required to address COL action items in their license application. However, the COL action items are not the only acceptable set of information. An applicant may depart from or omit COL action items, provided that the departure or omission is identified and justified in the FSAR. After issuance of a construction permit or COL, these items are not requirements for the licensee unless they are restated in the FSAR. For additional discussion, see Section D.

The investment protection short-term availability controls, which are set forth in section 16.3 of the generic DCD, were added to the information that is part of Tier 2 to make it clear that the availability controls are not operational requirements for the purposes of paragraph VIII.C of this appendix. Rather, the availability controls are associated with specific design features. The availability controls may be changed if the associated design feature is changed under paragraph VIII.B of this appendix. For additional discussion, see section III.C of this SOC.

Certain Tier 2 information has been designated in the generic DCD with brackets and italicized text as "Tier 2\*" information and, as discussed in greater detail in the section-by-section explanation for section H, a plant-specific departure from Tier 2\* information requires prior NRC approval. However, the Tier 2\* designation expires for some of this

information when the facility first achieves full power after the finding required by 10 CFR 52.103(g). The process for changing Tier 2\* information and the time at which its status as Tier 2\* expires is set forth in paragraph VIII.B.6 of this appendix. Some Tier 2\* requirements concerning special pre-operational tests are designated to be performed only for the first plant or first three plants referencing the AP1000 DCR. The Tier 2\* designation for these selected tests will expire after the first plant or first three plants complete the specified tests. However, a COL action item requires that subsequent plants also perform the tests or justify that the results of the first-plant-only or first-three-plants-only tests are applicable to the subsequent plant.

In an earlier rulemaking (64 FR 53582; October 4, 1999), the Commission revised 10 CFR 50.59 to incorporate new thresholds for permitting changes to a plant as described in the FSAR without NRC approval. For consistency and clarity, the Commission proposes to use these new thresholds in the proposed AP1000 DCR. Inasmuch as § 50.59 is the primary change mechanism for operating nuclear plants, the Commission believes that future plants referencing the AP1000 DCR should utilize thresholds as close to § 50.59 as is practicable and appropriate. Because of some differences in how the change control requirements are structured in the DCRs, certain definitions contained in § 50.59 are not applicable to 10 CFR part 52 and are not being included in this rule. One definition that the Commission is including is the definition from the new § 50.59 for a "departure from a method of evaluation," (paragraph II.G), which is appropriate to include in this rulemaking so that the eight criteria in paragraph VIII.B.5.b of the final rule will be implemented as intended.

### C. Scope and Contents

The purpose of section III of this appendix is to describe and define the scope and contents of this design certification and to set forth how documentation discrepancies or inconsistencies are to be resolved. Paragraph III.A is the required statement of the Office of the **Federal Register** (OFR) for approval of the incorporation by reference of Tier 1, Tier 2, and the generic TS into this appendix. Paragraph III.B requires COL applicants and licensees to comply with the requirements of this appendix. The legal effect of incorporation by reference is that the incorporated material has the same legal status as if it were published

in the *Code of Federal Regulations*. This material, like any other properly-issued regulation, has the force and effect of law. Tier 1 and Tier 2 information, as well as the generic TS, have been combined into a single document called the generic DCD, in order to effectively control this information and facilitate its incorporation by reference into the rule. The generic DCD was prepared to meet the requirements of the OFR for incorporation by reference (1 CFR part 51). One of the requirements of the OFR for incorporation by reference is that the design certification applicant must make the generic DCD available upon request after the final rule becomes effective. Therefore, paragraph III.A of this appendix identifies a Westinghouse representative to be contacted in order to obtain a copy of the generic DCD.

Paragraphs III.A and III.B also identify the investment protection short-term availability controls in section 16.3 of the generic DCD as part of the Tier 2 information. During its review of the AP1000 design, the NRC determined that residual uncertainties associated with passive safety system performance increased the importance of non-safety-related active systems in providing defense-in-depth functions that back-up the passive systems. As a result, Westinghouse developed administrative controls to provide a high level of confidence that active systems having a significant safety role are available when challenged. Westinghouse named these additional controls "investment protection short-term availability controls." The Commission included this characterization in section III of this appendix to ensure that these availability controls are binding on applicants and licensees that reference this appendix and will be enforceable by the NRC. The NRC's evaluation of the availability controls is provided in Chapter 22 of the FSER.

The generic DCD (master copy) for this design certification will be electronically accessible in NRC's Agencywide Documents Access and Management System (ADAMS) and at the OFR. Copies of the generic DCD will also be available at the NRC's Public Document Room (PDR). Questions concerning the accuracy of information in an application that references this appendix will be resolved by checking the master copy of the generic DCD in ADAMS. If a generic change (rulemaking) is made to the DCD by the change process provided in section VIII of this appendix, then at the completion of the rulemaking the NRC would request approval of the Director, OFR, for the changed incorporation by reference and change its copies of the

generic DCD and notify the OFR and the design certification applicant to change their copies. The Commission is requiring that the design certification applicant maintain an up-to-date copy under paragraph X.A.1 of this appendix because it is likely that most applicants intending to reference the standard design will obtain the generic DCD from the design certification applicant. Plant-specific changes to and departures from the generic DCD will be maintained by the applicant or licensee that references this appendix in a plant-specific DCD under paragraph X.A.2 of this appendix.

In addition to requiring compliance with this appendix, paragraph III.B clarifies that the conceptual design information and Westinghouse's evaluation of SAMDAs are not considered to be part of this appendix. The conceptual design information is for those portions of the plant that are outside the scope of the standard design and are contained in Tier 2 information. As provided by 10 CFR 52.47(a)(1)(ix), these conceptual designs are not part of this appendix and, therefore, are not applicable to an application that references this appendix. Therefore, the applicant is not required to conform with the conceptual design information that was provided by the design certification applicant. The conceptual design information, which consists of site-specific design features, was required to facilitate the design certification review. Conceptual design information is neither Tier 1 nor Tier 2. Section 1.8 of Tier 2 identifies the location of the conceptual design information. Westinghouse's evaluation of various design alternatives to prevent and mitigate severe accidents does not constitute design requirements. The Commission's assessment of this information is discussed in Section VII of this SOC on environmental impacts.

Paragraphs III.C and III.D set forth the way potential conflicts are to be resolved. Paragraph III.C establishes the Tier 1 description in the DCD as controlling in the event of an inconsistency between the Tier 1 and Tier 2 information in the DCD. Paragraph III.D establishes the generic DCD as the controlling document in the event of an inconsistency between the DCD and the FSER for the certified standard design.

Paragraph III.E makes it clear that design activities that are wholly outside the scope of this design certification may be performed using site-specific design parameters, provided the design activities do not affect Tier 1 or Tier 2, or conflict with the interface requirements in the DCD. This provision applies to site-specific portions of the



plant, such as the administration building. Because this statement is not a definition, this provision has been located in Section III of this appendix.

#### *D. Additional Requirements and Restrictions*

Section IV of this appendix sets forth additional requirements and restrictions imposed upon an applicant who references this appendix. Paragraph IV.A sets forth the information requirements for these applicants. This paragraph distinguishes between information and/or documents which must actually be included in the application or the DCD, versus those which may be *incorporated by reference* (i.e., referenced in the application as if the information or documents were included in the application). Any incorporation by reference in the application should be clear and should specify the title, date, edition, or version of a document, the page number(s), and table(s) containing the relevant information to be incorporated.

Paragraph IV.A.1 requires an applicant who references this appendix to incorporate by reference this appendix in its application. The legal effect of such an incorporation by reference is that this appendix is legally binding on the applicant or licensee. Paragraph IV.A.2.a requires that a plant-specific DCD be included in the initial application to ensure that the applicant commits to complying with the DCD. This paragraph also requires the plant-specific DCD to use the same format as the generic DCD and reflect the applicant's proposed departures and exemptions from the generic DCD as of the time of submission of the application. The Commission expects that the plant-specific DCD will become the plant's FSAR, by including information, i.e., site-specific information, for the portions of the plant outside the scope of the referenced design, including related ITAAC, and other matters required to be included in an FSAR by 10 CFR 50.34 and 52.79. Integration of the plant-specific DCD and remaining site-specific information into the plant's FSAR, will result in an application that is easier to use and should minimize "duplicate documentation" and the attendant possibility for confusion. Paragraph IV.A.2.a also requires that the initial application include the reports on departures and exemptions as of the time of submission of the application.

Paragraph IV.A.2.b requires that an application referencing this appendix include the reports required by paragraph X.B of this appendix for exemptions and departures proposed by

the applicant as of the date of submission of its application. Paragraph IV.A.2.c requires submission of plant-specific TS for the plant that consists of the generic TS from section 16.1 of the DCD, with any changes made under paragraph VIII.C of this appendix, and the TS for the site-specific portions of the plant that are either partially or wholly outside the scope of this design certification. The applicant must also provide the plant-specific information designated in the generic TS, such as bracketed values.

Paragraph IV.A.2.d requires the applicant referencing this appendix to provide information demonstrating that the proposed site falls within the site parameters for this appendix and that the plant-specific design complies with the interface requirements, as required by 10 CFR 52.79(b). If the proposed site has a characteristic that exceeds one or more of the site parameters in the DCD, then the proposed site is unacceptable for this design unless the applicant seeks an exemption under section VIII of this appendix and provides adequate justification for locating the certified design on the proposed site. Paragraph IV.A.2.e requires submission of information addressing COL action items, identified in the generic DCD as COL information in the application. The COL information identifies matters that need to be addressed by an applicant who references this appendix, as required by subpart C of 10 CFR part 52. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in its application (FSAR). Paragraph IV.A.2.f requires that the application include the information specified by 10 CFR 52.47(a) that is not within the scope of this rule, such as generic issues that must be addressed, in whole or in part, by an applicant that references this rule. Paragraph IV.A.3 requires the applicant to physically include, not simply reference, the proprietary and safeguards information referenced in the DCD, or its equivalent, to ensure that the applicant has actual notice of these requirements.

Paragraph IV.B reserves to the Commission the right to determine in what manner this DCR may be referenced by an applicant for a construction permit or operating license under 10 CFR part 50. This determination may occur in the context of a subsequent rulemaking modifying 10 CFR part 52 or this design certification rule, or on a case-by-case basis in the context of a specific application for a 10 CFR part 50 construction permit or operating license. This provision is necessary

because the previous DCRs were not implemented in the manner that was originally envisioned at the time that 10 CFR part 52 was promulgated. The Commission's concern is with the way ITAAC were developed and the lack of experience with design certifications in license proceedings. Therefore, it is appropriate that the Commission retain some discretion regarding the way this appendix could be referenced in a 10 CFR part 50 licensing proceeding.

#### *E. Applicable Regulations*

The purpose of section V of this appendix is to specify the regulations that were applicable and in effect at the time this design certification was approved. These regulations consist of the technically relevant regulations identified in paragraph V.A, except for the regulations in paragraph V.B that are not applicable to this certified design.

Paragraph V.A identifies the regulations in 10 CFR parts 20, 50, 73, and 100 that are applicable to the AP1000 design. After the NRC staff issued its FSER for the AP1000 design (NUREG-1793, September 2004), the Commission amended several existing regulations and adopted new regulations. The Commission reviewed these regulations to determine if they are applicable to this design and, if so, to determine if the design meets these regulations. The Commission finds that none of these new regulations are applicable to the AP1000 design. The Commission's determination of the applicable regulations was made as of the date specified in paragraph V.A of this appendix, which is the date that this appendix was approved by the Commission and signed by the Secretary of the Commission.

In paragraph V.B of this appendix, the Commission identifies the regulations that do not apply to the AP1000 design. The Commission has determined that the AP1000 design should be exempt from portions of 10 CFR 50.34, 50.62, and Appendix A to part 50, as described in the FSER (NUREG-1793) and summarized below:

(1) Paragraph (f)(2)(iv) of 10 CFR 50.34—*Plant Safety Parameter Display Console*. Under 10 CFR 52.47(a)(ii), an applicant for design certification must demonstrate compliance with any technically relevant Three Mile Island (TMI) requirements in 10 CFR 50.34(f). The requirement in 10 CFR 50.34(f)(2)(iv) states that an application must provide a plant safety parameter display console that will display a minimum set of parameters defining the safety status of the plant, be capable of displaying a full range of important plant parameters and data trends on

demand, and be capable of indicating when process limits are being approached or exceeded. Westinghouse addresses this requirement, in section 18.8.2 of the DCD, with an integrated design rather than a stand-alone, add-on system, as is used at most current operating plants. Specifically, Westinghouse integrated the safety parameter display system (SPDS) requirements into the design requirements for the alarm and display systems. The NRC staff has determined that the function of a separate SPDS may be integrated into the overall control room design. Therefore, the Commission has determined that the special circumstances for allowing an exemption as described in 10 CFR 50.12(a)(2)(ii) exist because the requirement for an SPDS console need not be applied in this particular circumstance to achieve the underlying purpose because Westinghouse has provided an acceptable alternative that accomplishes the intent of the regulation. On this basis, the Commission concludes that an exemption from the requirements of 10 CFR 50.34(f)(2)(iv) is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security.

(2) *Paragraph (c)(1) of 10 CFR 50.62—Auxiliary Feedwater System.* The AP1000 design relies on the passive residual heat removal system (PRHR) in lieu of an auxiliary or emergency feedwater system as its safety-related method of removing decay heat. Westinghouse requested an exemption from a portion of 10 CFR 50.62(c)(1), which requires auxiliary or emergency feedwater as an alternate system for decay heat removal during an anticipated transient without scram (ATWS) event. The NRC staff concluded that Westinghouse met the intent of the rule by relying on the PRHR system to remove the decay heat and, thereby, met the underlying purpose of the rule. Therefore, the Commission has determined that the special circumstances for allowing an exemption described in 10 CFR 50.12(a)(2)(ii) exist because the requirement for an auxiliary or emergency feedwater system is not necessary to achieve the underlying purpose of 10 CFR 50.62(c)(1). This is because Westinghouse has adopted acceptable alternatives that accomplish the intent of this regulation, and the exemption is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security.

(3) *Appendix A to 10 CFR part 50, GDC 17—Second Offsite Power Supply*

*Circuit.* Westinghouse requested a partial exemption from the requirement in General Design Criteria (GDC) 17 for a second offsite power supply circuit. The AP1000 plant design supports an exemption to this requirement by providing safety-related “passive” systems. These passive safety-related systems only require electric power for valves and the related instrumentation. The onsite Class 1E batteries and associated dc and ac distribution systems can provide the power for these valves and instrumentation. In addition, if no offsite power is available, it is expected that the non-safety-related onsite diesel generators would be available for important plant functions. However, this non-safety-related ac power is not relied on to maintain core cooling or containment integrity. Therefore, the Commission has determined that the special circumstances for allowing an exemption as described in 10 CFR 50.12(a)(2)(ii) exist because the requirement need not be applied in this particular circumstance to achieve the underlying purpose of having two offsite power sources. This is because the AP1000 design includes an acceptable alternative approach to accomplish safety functions that do not rely on power from the offsite system and, therefore, accomplishes the intent of the regulation. On this basis, the Commission concludes that a partial exemption from the requirements of GDC 17 is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security.

#### *F. Issue Resolution*

The purpose of section VI of this appendix is to identify the scope of issues that are resolved by the Commission in this rulemaking and; therefore, are “matters resolved” within the meaning and intent of 10 CFR 52.63(a)(4). The section is divided into five parts: (A) The Commission’s safety findings in adopting this appendix, (B) the scope and nature of issues which are resolved by this rulemaking, (C) issues which are not resolved by this rulemaking, (D) the backfit restrictions applicable to the Commission with respect to this appendix, and (E) the availability of secondary references.

Paragraph VI.A describes the nature of the Commission’s findings in general terms and makes the finding required by 10 CFR 52.54 for the Commission’s approval of this DCR. Furthermore, paragraph VI.A explicitly states the Commission’s determination that this design provides adequate protection of the public health and safety.

Paragraph VI.B sets forth the scope of issues that may not be challenged as a matter of right in subsequent proceedings. The introductory phrase of paragraph VI.B clarifies that issue resolution as described in the remainder of the paragraph extends to the delineated NRC proceedings referencing this appendix. The remainder of paragraph VI.B describes the categories of information for which there is issue resolution. Specifically, paragraph VI.B.1 provides that all nuclear safety issues arising from the Atomic Energy Act of 1954, as amended, that are associated with the information in the NRC staff’s FSER (NUREG-1793) and Supplement No. 1, the Tier 1 and Tier 2 information (including the availability controls in Section 16.3 of the generic DCD), and the rulemaking record for this appendix are resolved within the meaning of 10 CFR 52.63(a)(4). These issues include the information referenced in the DCD that are requirements (*i.e.*, “secondary references”), as well as all issues arising from proprietary and safeguards information which are intended to be requirements.

Paragraph VI.B.2 provides for issue preclusion of proprietary and safeguards information. Paragraphs VI.B.3, VI.B.4, VI.B.5, and VI.B.6 clarify that approved changes to and departures from the DCD which are accomplished in compliance with the relevant procedures and criteria in section VIII of this appendix continue to be matters resolved in connection with this rulemaking. Paragraphs VI.B.4, VI.B.5, and VI.B.6, which characterize the scope of issue resolution in three situations, use the phrase “*but only for that plant.*” Paragraph VI.B.4 describes how issues associated with a design certification rule are resolved when an exemption has been granted for a plant referencing the design certification rule. Paragraph VI.B.5 describes how issues are resolved when a plant referencing the design certification rule obtains a license amendment for a departure from Tier 2 information.

Paragraph VI.B.6 describes how issues are resolved when the applicant or licensee departs from the Tier 2 information on the basis of paragraph VIII.B.5, which will waive the requirement for NRC approval. In all three situations, after a matter (*e.g.*, an exemption in the case of paragraph VI.B.4) is addressed for a specific plant referencing a design certification rule, the adequacy of that matter *for that plant* will not ordinarily be subject to challenge in any subsequent proceeding or action for that plant (*e.g.*, an enforcement action) listed in the

introductory portion of paragraph IV.B. There will not, by contrast, be any issue resolution on that subject matter for any other plant.

Paragraph VI.B.7 provides that, for those plants located on sites whose site parameters do not exceed those assumed in Westinghouse's evaluation of SAMDAs, all issues with respect to SAMDAs arising under the National Environmental Policy Act of 1969, as amended (NEPA), associated with the information in the environmental assessment for this design and the information regarding SAMDAs in Appendix 1B of the generic DCD are also resolved within the meaning and intent of 10 CFR 52.63(a)(4). If an exemption from a site parameter is granted, the exemption applicant has the initial burden of demonstrating that the original SAMDA analysis still applies to the actual site parameters but; if the exemption is approved, requests for litigation at the COL stage must meet the requirements of 10 CFR 2.309 and present sufficient information to create a genuine controversy in order to obtain a hearing on the site parameter exemption.

Paragraph VI.C reserves the right of the Commission to impose operational requirements on applicants that reference this appendix. This provision reflects the fact that operational requirements, including generic TS in section 16.1 of the DCD, were not completely or comprehensively reviewed at the design certification stage. Therefore, the special backfit provisions of 10 CFR 52.63 do not apply to operational requirements. However, all design changes will be controlled by the appropriate provision in section VIII of this appendix. Although the information in the DCD that is related to operational requirements is necessary to support the NRC's safety review of this design, the review of this information was not sufficient to conclude that the operational requirements are fully resolved and ready to be assigned finality under 10 CFR 52.63. As a result, if the NRC wanted to change a temperature limit and that operational change required a consequential change to a design feature, then the temperature limit backfit would be controlled by paragraph VIII.A or VIII.B of this appendix. However, changes to other operational requirements, such as inservice testing and inservice inspection programs, post-fuel load verification activities, and requirements governing shutdown risk that do not require a design change would not be restricted by 10 CFR 52.63 (see paragraph VIII.C of this appendix).

Paragraph VI.C allows the NRC to impose future operational requirements (distinct from design matters) on applicants who reference this design certification. Also, license conditions for portions of the plant within the scope of this design certification, e.g., start-up and power ascension testing, are not restricted by 10 CFR 52.63. The requirement to perform these testing programs is contained in Tier 1 information. However, ITAAC cannot be specified for these subjects because the matters to be addressed in these license conditions cannot be verified prior to fuel load and operation, when the ITAAC are satisfied. Therefore, another regulatory vehicle is necessary to ensure that licensees comply with the matters contained in the license conditions. License conditions for these areas cannot be developed now because this requires the type of detailed design information that will be developed during a combined license review. In the absence of detailed design information to evaluate the need for and develop specific post-fuel load verifications for these matters, the Commission is reserving the right to impose license conditions by rule for post-fuel load verification activities for portions of the plant within the scope of this design certification.

Paragraph VI.D reiterates the restrictions (contained in section VIII of this appendix) placed upon the Commission when ordering generic or plant-specific modifications, changes or additions to structures, systems, or components, design features, design criteria, and ITAAC (paragraph VI.D.3 would address ITAAC) within the scope of the certified design.

Paragraph VI.E provides the procedure for an interested member of the public to obtain access to proprietary or safeguards information for the AP1000 design, in order to request and participate in proceedings identified in paragraph VI.B of this appendix, viz., proceedings involving licenses and applications which reference this appendix. Paragraph VI.E specifies that access must first be sought from the design certification applicant. If Westinghouse refuses to provide the information, the person seeking access shall request access from the Commission or the presiding officer, as applicable. Access to the proprietary or safeguards information may be ordered by the Commission, but must be subject to an appropriate non-disclosure agreement.

#### *G. Duration of This Appendix*

The purpose of section VII of this appendix is in part, to specify the

period during which this design certification may be referenced by an applicant for a COL, under 10 CFR 52.55. This section also states that the design certification remains valid for an applicant or licensee that references the design certification until the application is withdrawn or the license expires. Therefore, if an application references this design certification during the 15-year period, then the design certification will be effective until the application is withdrawn or the license issued on that application expires. Also, the design certification will be effective for the referencing licensee if the license is renewed. The Commission intends for this appendix to remain valid for the life of the plant that references the design certification to achieve the benefits of standardization and licensing stability. This means that changes to, or plant-specific departures from, information in the plant-specific DCD must be made under the change processes in section VIII of this appendix for the life of the plant.

#### *H. Processes for Changes and Departures*

The purpose of section VIII of this appendix is to set forth the processes for generic changes to or plant-specific departures (including exemptions) from the DCD. The Commission adopted this restrictive change process in order to achieve a more stable licensing process for applicants and licensees that reference this DCR. Section VIII is divided into three paragraphs, which correspond to Tier 1, Tier 2, and operational requirements. The language of section VIII of this appendix distinguishes between generic *changes* to the DCD versus plant-specific *departures* from the DCD. Generic *changes* must be accomplished by rulemaking because the intended subject of the change is this DCR itself, as is contemplated by 10 CFR 52.63(a)(1). Consistent with 10 CFR 52.63(a)(2), any generic rulemaking changes are applicable to all plants, absent circumstances which render the change ["modification" in the language of 10 CFR 52.63(a)(2)] "technically irrelevant." By contrast, plant-specific *departures* could be either a Commission-issued order to one or more applicants or licensees; or an applicant or licensee-initiated departure applicable only to that applicant's or licensee's plant(s), similar to a 10 CFR 50.59 departure or an exemption. Because these plant-specific departures will result in a DCD that is unique for that plant, section X of this appendix requires an applicant or licensee to maintain a plant-specific DCD. For

purposes of brevity, this discussion refers to both generic changes and plant-specific departures as "change processes."

Section VIII of this appendix refers to an exemption from one or more requirements of this appendix and the criteria for granting an exemption. The Commission cautions that when the exemption involves an underlying substantive requirement (applicable regulation), then the applicant or licensee requesting the exemption must also show that an exemption from the underlying applicable requirement meets the criteria of 10 CFR 50.12.

#### Tier 1 information

The change processes for Tier 1 information are covered in paragraph VIII.A. Generic changes to Tier 1 are accomplished by rulemakings that amend the generic DCD and are governed by the standards in 10 CFR 52.63(a)(1). This provision provides that the Commission may not modify, change, rescind, or impose new requirements by rulemaking except when necessary either to bring the certification into compliance with the Commission's regulations applicable and in effect at the time of approval of the design certification or to ensure adequate protection of the public health and safety or common defense and security. The rulemakings must provide for notice and opportunity for public comment on the proposed change, as required by 10 CFR 52.63(a)(1).

Departures from Tier 1 may occur in two ways: (1) The Commission may order a licensee to depart from Tier 1, as provided in paragraph VIII.A.3; or (2) an applicant or licensee may request an exemption from Tier 1, as provided in paragraph VIII.A.4. If the Commission seeks to order a licensee to depart from Tier 1, paragraph VIII.A.3 requires that the Commission find both that the departure is necessary for adequate protection or for compliance, and that special circumstances are present. Paragraph VIII.A.4 provides that exemptions from Tier 1 requested by an applicant or licensee are governed by the requirements of 10 CFR 52.63(b)(1) and 52.97(b), which provide an opportunity for a hearing. In addition, the Commission will not grant requests for exemptions that may result in a significant decrease in the level of safety otherwise provided by the design.

#### Tier 2 information

The change processes for the three different categories of Tier 2 information, namely, Tier 2, Tier 2\*, and Tier 2\* with a time of expiration, are set forth in paragraph VIII.B. The

change process for Tier 2 has the same elements as the Tier 1 change process, but some of the standards for plant-specific orders and exemptions are different. As stated in section III, of this SOC, it is the Commission's intent that this appendix emulates Appendix C to 10 CFR part 52. However, the Commission has revised the 10 CFR 50.59-like change process in paragraph VIII.B.5 of this appendix to be commensurate with the new 10 CFR 50.59 (64 FR 53613, October 4, 1999).

The process for generic Tier 2 changes (including changes to Tier 2\* and Tier 2\* with a time of expiration) tracks the process for generic Tier 1 changes. As set forth in paragraph VIII.B.1, generic Tier 2 changes are accomplished by rulemaking amending the generic DCD and are governed by the standards in 10 CFR 52.63(a)(1). This provision provides that the Commission may not modify, change, rescind, or impose new requirements by rulemaking except when necessary, either to bring the certification into compliance with the Commission's regulations applicable and in effect at the time of approval of the design certification or to ensure adequate protection of the public health and safety or common defense and security. If a generic change is made to Tier 2\* information, then the category and expiration, if necessary, of the new information would also be determined in the rulemaking and the appropriate change process for that new information would apply.

Departures from Tier 2 may occur in five ways: (1) The Commission may order a plant-specific departure, as set forth in paragraph VIII.B.3; (2) an applicant or licensee may request an exemption from a Tier 2 requirement as set forth in paragraph VIII.B.4; (3) a licensee may make a departure without prior NRC approval under paragraph VIII.B.5 [similar to the process in 10 CFR 50.59]; (4) the licensee may request NRC approval for proposed departures which do not meet the requirements in paragraph VIII.B.5 as provided in paragraph VIII.B.5.d; and (5) the licensee may request NRC approval for a departure from Tier 2\* information under paragraph VIII.B.6.

Similar to Commission-ordered Tier 1 departures and generic Tier 2 changes, Commission-ordered Tier 2 departures cannot be imposed except when necessary either to bring the certification into compliance with the Commission's regulations applicable and in effect at the time of approval of the design certification or to ensure adequate protection of the public health and safety or common defense and security, as set forth in paragraph

VIII.B.3. However, the special circumstances for the Commission-ordered Tier 2 departures do not have to outweigh any decrease in safety that may result from the reduction in standardization caused by the plant-specific order, as required by 10 CFR 52.63(a)(3). The Commission determined that it was not necessary to impose an additional limitation similar to that imposed on Tier 1 departures by 10 CFR 52.63(a)(3) and (b)(1). This type of additional limitation for standardization would unnecessarily restrict the flexibility of applicants and licensees with respect to Tier 2 information.

An applicant or licensee may request an exemption from Tier 2 information as set forth in paragraph VIII.B.4. The applicant or licensee must demonstrate that the exemption complies with one of the special circumstances in 10 CFR 50.12(a). In addition, the Commission will not grant requests for exemptions that may result in a significant decrease in the level of safety otherwise provided by the design. However, the special circumstances for the exemption do not have to outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption. If the exemption is requested by an applicant for a license, the exemption is subject to litigation in the same manner as other issues in the license hearing, consistent with 10 CFR 52.63(b)(1). If the exemption is requested by a licensee, then the exemption is subject to litigation in the same manner as a license amendment.

Paragraph VIII.B.5 allows an applicant or licensee to depart from Tier 2 information, without prior NRC approval, if the proposed departure does not involve a change to, or departure from, Tier 1 or Tier 2\* information, TS, or does not require a license amendment under paragraphs VIII.B.5.b or VIII.B.5.c. The TS referred to in VIII.B.5.a of this paragraph are the TS in section 16.1 of the generic DCD, including bases, for departures made prior to issuance of the COL. After issuance of the COL, the plant-specific TS are controlling under paragraph VIII.B.5. The bases for the plant-specific TS will be controlled by the bases control procedures for the plant-specific TS (analogous to the bases control provision in the Improved Standard Technical Specifications). The requirement for a license amendment in paragraph VIII.B.5.b will be similar to the definition in the new 10 CFR 50.59 and apply to all information in Tier 2 except for the information that resolves the severe accident issues.

The Commission believes that the resolution of severe accident issues should be preserved and maintained in the same fashion as all other safety issues that were resolved during the design certification review (refer to SRM on SECY-90-377). However, because of the increased uncertainty in severe accident issue resolutions, the Commission has adopted separate criteria in paragraph VIII.B.5.c for determining if a departure from information that resolves severe accident issues would require a license amendment. For purposes of applying the special criteria in paragraph VIII.B.5.c, severe accident resolutions are limited to design features where the intended function of the design feature is relied upon to resolve postulated accidents when the reactor core has melted and exited the reactor vessel, and the containment is being challenged. These design features are identified in section 1.9.5 and Appendix 19B of the DCD, with other issues, and are described in other sections of the DCD. Therefore, the location of design information in the DCD is not important to the application of this special procedure for severe accident issues. However, the special procedure in paragraph VIII.B.5.c does not apply to design features that resolve so-called "beyond design-basis accidents" or other low-probability events. The important aspect of this special procedure is that it is limited to severe accident design features, as defined above. Some design features may have intended functions to meet "design basis" requirements and to resolve "severe accidents." If these design features are reviewed under paragraph VIII.B.5, then the appropriate criteria from either paragraphs VIII.B.5.b or VIII.B.5.c are selected depending upon the function being changed.

An applicant or licensee that plans to depart from Tier 2 information, under paragraph VIII.B.5, is required to prepare an evaluation which provides the bases for the determination that the proposed change does not require a license amendment or involve a change to Tier 1 or Tier 2\* information, or a change to the TS, as explained above. In order to achieve the Commission's goals for design certification, the evaluation needs to consider all of the matters that were resolved in the DCD, such as generic issue resolutions that are relevant to the proposed departure. The benefits of the early resolution of safety issues would be lost if departures from the DCD were made that violated these resolutions without appropriate review.

The evaluation of the relevant matters needs to consider the proposed

departure over the full range of power operation from startup to shutdown, as it relates to anticipated operational occurrences, transients, design-basis accidents, and severe accidents. The evaluation must also include a review of all relevant secondary references from the DCD because Tier 2 information, which is intended to be treated as a requirement, is contained in the secondary references. The evaluation should consider Tables 14.3-1 through 14.3-8 and 19.59-18 of the generic DCD to ensure that the proposed change does not impact Tier 1 information. These tables contain cross-references from the safety analyses and probabilistic risk assessment in Tier 2 to the important parameters that were included in Tier 1.

A party to an adjudicatory proceeding (e.g., for issuance of a COL) who believes that an applicant or licensee has not complied with paragraph VIII.B.5 when departing from Tier 2 information, is permitted to petition to admit such a contention into the proceeding under paragraph VIII.B.5.f. This provision was included because an incorrect departure from the requirements of this appendix essentially places the departure outside of the scope of the Commission's safety finding in the design certification rulemaking. Therefore, it follows that properly founded contentions alleging such incorrectly implemented departures cannot be considered "resolved" by this rulemaking. As set forth in paragraph VIII.B.5.f, the petition must comply with the requirements of 10 CFR 2.309 and show that the departure does not comply with paragraph VIII.B.5. Any other party may file a response to the petition. If on the basis of the petition and any responses, the presiding officer in the proceeding determines that the required showing has been made, the matter shall be certified to the Commission for its final determination. In the absence of a proceeding, petitions alleging nonconformance with paragraph VIII.B.5 requirements applicable to Tier 2 departures will be treated as petitions for enforcement action under 10 CFR 2.206.

Paragraph VIII.B.6 provides a process for departing from Tier 2\* information. The creation of and restrictions on changing Tier 2\* information resulted from the development of the Tier 1 information for ABWR design certification (Appendix A to part 52) and the ABB-CE System 80+ design certification (Appendix B to part 52). During this development process, these applicants requested that the amount of information in Tier 1 be minimized to provide additional flexibility for an

applicant or licensee who references these appendices. Also, many codes, standards, and design processes, which were not specified in Tier 1 that are acceptable for meeting ITAAC, were specified in Tier 2. The result of these actions is that certain significant information only exists in Tier 2 and the Commission does not want this significant information to be changed without prior NRC approval. This Tier 2\* information is identified in the generic DCD with italicized text and brackets (See Table 1-1 of AP1000 DCD Introduction).

Although the Tier 2\* designation was originally intended to last for the lifetime of the facility, like Tier 1 information, the NRC determined that some of the Tier 2\* information could expire when the plant first achieves full (100 percent) power, after the finding required by 10 CFR 52.103(g), while other Tier 2\* information must remain in effect throughout the life of the facility. The factors determining whether Tier 2\* information could expire after the first full power was achieved were whether the Tier 1 information would govern these areas after first full power and the NRC's determination that prior approval was required before implementation of the change due to the significance of the information. Therefore, certain Tier 2\* information listed in paragraph VIII.B.6.c ceases to retain its Tier 2\* designation after full-power operation is first achieved following the Commission finding under 10 CFR 52.103(g). Thereafter, that information is deemed to be Tier 2 information that is subject to the departure requirements in paragraph VIII.B.5. By contrast, the Tier 2\* information identified in paragraph VIII.B.6.b retains its Tier 2\* designation throughout the duration of the license, including any period of license renewal.

Certain preoperational tests in paragraph VIII.B.6.c are designated to be performed only for the first plant or first three plants that reference this appendix. Westinghouse's basis for performing these "first-plant-only" and "first-three-plants-only" preoperational tests is provided in section 14.2.5 of the DCD. The NRC found Westinghouse's basis for performing these tests and its justification for only performing the tests on the first plant or first three plants acceptable. The NRC's decision was based on the need to verify that plant-specific manufacturing and/or construction variations do not adversely impact the predicted performance of certain passive safety systems, while recognizing that these special tests will result in significant thermal transients being applied to critical plant

components. The NRC believes that the range of manufacturing or construction variations that could adversely affect the relevant passive safety systems would be adequately disclosed after performing the designated tests on the first plant, or the first three plants, as applicable. The COL action item in section 14.4.6 of the DCD states that subsequent plants shall either perform these preoperational tests or justify that the results of the first-plant-only or first-three-plant-only tests are applicable to the subsequent plant. The Tier 2\* designation for these tests will expire after the first plant or first three plants complete these tests, as indicated in paragraph VIII.B.6.c.

If Tier 2\* information is changed in a generic rulemaking, the designation of the new information (Tier 1, 2\*, or 2) would also be determined in the rulemaking and the appropriate process for future changes would apply. If a plant-specific departure is made from Tier 2\* information, then the new designation would apply only to that plant. If an applicant who references this design certification makes a departure from Tier 2\* information, the new information is subject to litigation in the same manner as other plant-specific issues in the licensing hearing. If a licensee makes a departure from Tier 2\* information, it will be treated as a license amendment under 10 CFR 50.90 and the finality will be determined under paragraph VI.B.5 of this appendix. Any requests for departures from Tier 2\* information that affects Tier 1 must also comply with the requirements in paragraph VIII.A of this appendix.

#### Operational Requirements

The change process for TS and other operational requirements in the DCD is set forth in paragraph VIII.C. This change process has elements similar to the Tier 1 and Tier 2 change process in paragraphs VIII.A and VIII.B, but with significantly different change standards. Because of the different finality status for TS and other operational requirements (refer to paragraph III.F of this SOC), the Commission designated a special category of information, consisting of the TS and other operational requirements, with its own change process in proposed paragraph VIII.C. The key to using the change processes proposed in section VIII is to determine if the proposed change or departure requires a change to a design feature described in the generic DCD. If a design change is required, then the appropriate change process in paragraph VIII.A or VIII.B applies. However, if a proposed change to the TS or other operational requirements does not

require a change to a design feature in the generic DCD, then paragraph VIII.C applies. The language in paragraph VIII.C also distinguishes between generic (section 16.1 of DCD) and plant-specific TS to account for the different treatment and finality accorded TS before and after a license is issued.

The process in paragraph VIII.C.1 for making generic changes to the generic TS in section 16.1 of the DCD or other operational requirements in the generic DCD is accomplished by rulemaking and governed by the backfit standards in 10 CFR 50.109. The determination of whether the generic TS and other operational requirements were completely reviewed and approved in the design certification rulemaking is based upon the extent to which an NRC safety conclusion in the FSER is being modified or changed. If it cannot be determined that the TS or operational requirement was comprehensively reviewed and finalized in the design certification rulemaking, then there is no backfit restriction under 10 CFR 50.109 because no prior position was taken on this safety matter. Generic changes made under proposed paragraph VIII.C.1 are applicable to all applicants or licensees (refer to paragraph VIII.C.2), unless the change is irrelevant because of a plant-specific departure.

Some generic TS and investment protection short-term availability controls contain values in brackets []. The brackets are placeholders indicating that the NRC's review is not complete, and represent a requirement that the applicant for a combined license referencing the AP1000 DCR must replace the values in brackets with final plant-specific values. The values in brackets are neither part of the design certification rule nor are they binding. Therefore, the replacement of bracketed values with final plant-specific values does not require an exemption from the generic TS or investment protection short-term availability controls.

Plant-specific departures may occur by either a Commission order under paragraph VIII.C.3 or an applicant's exemption request under paragraph VIII.C.4. The basis for determining if the TS or operational requirement was completely reviewed and approved for these processes is the same as for paragraph VIII.C.1 above. If the TS or operational requirement is comprehensively reviewed and finalized in the design certification rulemaking, then the Commission must demonstrate that special circumstances are present before ordering a plant-specific departure. If not, there is no restriction on plant-specific changes to

the TS or operational requirements, prior to the issuance of a license, provided a design change is not required. Although the generic TS were reviewed and approved by the NRC staff in support of the design certification review, the Commission intends to consider the lessons learned from subsequent operating experience during its licensing review of the plant-specific TS. The process for petitioning to intervene on a TS or operational requirement contained in paragraph VIII.C.5 is similar to other issues in a licensing hearing, except that the petitioner must also demonstrate why special circumstances are present.

Finally, the generic TS will have no further effect on the plant-specific TS after the issuance of a license that references this appendix. The bases for the generic TS will be controlled by the change process in paragraph VIII.C of this appendix. After a license is issued, the bases will be controlled by the bases change provision set forth in the administrative controls section of the plant-specific TS.

#### *I. Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)*

The purpose of section IX of this appendix is to set forth how the ITAAC in Tier 1 of this design certification rule are to be treated in a license proceeding. Paragraph IX.A restates the responsibilities of an applicant or licensee for performing and successfully completing ITAAC, and notifying the NRC of such completion. Paragraph IX.A.1 clarifies that an applicant may proceed at its own risk with design and procurement activities subject to ITAAC, and that a licensee may proceed at its own risk with design, procurement, construction, and preoperational testing activities subject to an ITAAC, even though the NRC may not have found that any particular ITAAC has been successfully completed. Paragraph IX.A.2 requires the licensee to notify the NRC that the required inspections, tests, and analyses in the ITAAC have been completed and that the acceptance criteria have been met.

Paragraphs IX.B.1 and IX.B.2 reiterate the NRC's responsibilities with respect to ITAAC as set forth in 10 CFR 52.99 and 52.103(g).<sup>1</sup> Finally, paragraph IX.B.3 states that ITAAC do not, by virtue of their inclusion in the DCD, constitute regulatory requirements after the licensee has received authorization to load fuel or has been granted a

<sup>1</sup>For discussion of the verification of ITAAC, see SECY-00-92, "Combined License Review Process," dated April 20, 2000.

renewal of its license. However, subsequent modifications to the terms of the COL must comply with the design descriptions in the DCD unless the applicable requirements in 10 CFR 52.97 and section VIII of this appendix have been met. As discussed in paragraph III.D of this SOC, the Commission will defer a determination of the applicability of ITAAC and its effect in terms of issue resolution in 10 CFR part 50 licensing proceedings until a part 50 applicant decides to reference this appendix.

#### *J. Records and Reporting*

The purpose of section X of this appendix is to set forth the requirements that will apply to maintaining records of changes to and departures from the generic DCD, which are to be reflected in the plant-specific DCD. Section X also sets forth the requirements for submitting reports (including updates to the plant-specific DCD) to the NRC. This section of the appendix is similar to the requirements for records and reports in 10 CFR part 50, except for minor differences in information collection and reporting requirements.

Paragraph X.A.1 of this appendix requires that a generic DCD and the proprietary and safeguards information referenced in the generic DCD be maintained by the applicant for this rule. The generic DCD was developed, in part, to meet the requirements for incorporation by reference, including availability requirements. Therefore, the proprietary and safeguards information could not be included in the generic DCD because they are not publicly available. However, the proprietary and safeguards information was reviewed by the NRC and, as stated in paragraph VI.B.2 of this appendix, the Commission considers the information resolved within the meaning of 10 CFR 52.63(a)(4). Because this information is not in the generic DCD, the proprietary and safeguards information, or its equivalent, is required to be provided by an applicant for a license. Therefore, to ensure that this information will be available, a requirement for the design certification applicant to maintain the proprietary and safeguards information was added to proposed paragraph X.A.1 of this appendix. The acceptable version of the proprietary and safeguards information is identified (referenced) in the version of the DCD that is incorporated into this rule. The generic DCD and the acceptable version of the proprietary and safeguards information must be maintained for the period of time that this appendix may be referenced.

Paragraphs X.A.2 and X.A.3 place recordkeeping requirements on the applicant or licensee that references this design certification so that its plant-specific DCD accurately reflects both generic changes to the generic DCD and plant-specific departures made under Section VIII of this appendix. The term "plant-specific" was added to paragraph X.A.2 and other sections of this appendix to distinguish between the generic DCD that is incorporated by reference into this appendix, and the plant-specific DCD that the applicant is required to submit under paragraph IV.A of this appendix. The requirement to maintain changes to the generic DCD is explicitly stated to ensure that these changes are not only reflected in the generic DCD, which will be maintained by the applicant for design certification, but also in the plant-specific DCD. Therefore, records of generic changes to the DCD will be required to be maintained by both entities to ensure that both entities have up-to-date DCDs.

Paragraph X.A of this appendix does not place recordkeeping requirements on site-specific information that is outside the scope of this rule. As discussed in paragraph III.D of this SOC, the FSAR required by 10 CFR 52.79 will contain the plant-specific DCD and the site-specific information for a facility that references this rule. The phrase "site-specific portion of the final safety analysis report" in paragraph X.B.3.c of this appendix refers to the information that is contained in the FSAR for a facility (required by 10 CFR 52.79) but is not part of the plant-specific DCD (required by paragraph IV.A of this appendix). Therefore, this rule does not require that duplicate documentation be maintained by an applicant or licensee that references this rule, because the plant-specific DCD is part of the FSAR for the facility.

Paragraph X.B.1 requires applicants or licensees that reference this rule to submit reports, which describe departures from the DCD and include a summary of the written evaluations. The requirements for the written evaluations are set forth in paragraph X.A.1. The frequency of the report submittals is set forth in paragraph X.B.3. The requirement for submitting a summary of the evaluations is similar to the requirement in 10 CFR 50.59(d)(2).

Paragraph X.B.2 requires applicants or licensees that reference this rule to submit updates to the DCD, which include both generic changes and plant-specific departures. The frequency for submitting updates is set forth in paragraph X.B.3. The requirements in paragraph X.B.3 for submitting the reports and updates will vary according

to certain time periods during a facility's lifetime. If a potential applicant for a combined license who references this rule decides to depart from the generic DCD prior to submission of the application, then paragraph X.B.3.a will require that the updated DCD be submitted as part of the initial application for a license. Under paragraph X.B.3.b, the applicant may submit any subsequent updates to its plant-specific DCD along with its amendments to the application provided that the submittals are made at least once per year. Because amendments to an application are typically made more frequently than once a year, this should not be an excessive burden on the applicant.

Paragraph X.B.3.b also requires that the reports required by paragraph X.B.1 be submitted semi-annually. This increase in reporting frequency during the period of construction and application review is consistent with Commission guidance. Also, more frequent reporting of design changes during the period of detailed design and construction is necessary to closely monitor the status and progress of the facility. In order to make the finding under 10 CFR 52.103(g), the NRC must monitor the design changes made under proposed section VIII of this appendix. Frequent reporting of design changes would be particularly important when the number of design changes could be significant, such as during the procurement of components and equipment, detailed design of the plant before and during construction, and during preoperational testing. After the facility begins operation, the frequency of reporting will revert to the requirement in paragraph X.B.3.c, which is consistent with the requirements for plants licensed under 10 CFR 50.57.

#### **IV. Availability of Documents**

The NRC is making the documents identified below available to interested persons through one or more of the following:

*Public Document Room (PDR).* The NRC's Public Document Room is located at 11555 Rockville Pike, Public File Area O-1 F21, Rockville, Maryland 20852. Copies of publicly available documents related to this rulemaking can be viewed electronically on public computers in the PDR. The PDR reproduction contractor will make copies of documents for a fee.

*Rulemaking Web site (Web).* The NRC's interactive rulemaking Web site is located at <http://ruleforum.llnl.gov>. Selected documents may be viewed and



downloaded electronically via this Web site.

*Public Electronic Reading Room (ADAMS).* The NRC's Public Electronic

Reading Room (PERR) is located at <http://www.nrc.gov/reading-rm/adams.html>. Through this site, the

public can gain access to ADAMS, which provides text and image files of NRC's public documents.

Document	PDR	Web	ADAMS
AP1000 Design Control Document, Revision 15 .....	X	.....	ML053460400
AP1000 Final Environmental Assessment .....	X	.....	ML053630176
AP1000 Final Safety Evaluation Report [NUREG-1793] .....	X	.....	ML043570339
NUREG-1793, Supplement 1, AP1000 FSER .....	X	.....	ML053410203
SECY-05-0227, Final Rule—AP1000 Design Certification .....	X	X	ML053250288
Regulatory History of Design Certification <sup>2</sup> .....	X	.....	ML003761550

## V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Act), Public Law 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is approving the AP1000 standard plant design for use in nuclear power plant licensing under 10 CFR parts 50 or 52. Design certifications are not generic rulemakings establishing a generally applicable standard with which all parts 50 and 52 nuclear power plant licensees must comply. Design certifications are Commission approvals of specific nuclear power plant designs by rulemaking. Furthermore, design certifications are initiated by an applicant for rulemaking, rather than by the NRC. For these reasons, the NRC concludes that the Act does not apply to this final rule.

## VI. Finding of No Significant Environmental Impact: Availability

The Commission has determined under NEPA, and the Commission's regulations in 10 CFR part 51, subpart A, that this design certification rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an Environmental Impact Statement (EIS) is not required. The basis for this determination, as documented in the environmental assessment (EA), is that this amendment to 10 CFR part 52 does not authorize the siting, construction, or operation of a facility using the AP1000 design; it only codifies the AP1000 design in a rule. The NRC will evaluate the environmental impacts and issue an EIS as appropriate under NEPA as part of the application(s) for the construction and operation of a facility referencing the AP1000 design certification rule.

In addition, as part of the environmental assessment for the AP1000 design, the NRC reviewed Westinghouse's evaluation of various design alternatives to prevent and mitigate severe accidents in Appendix 1B of the AP1000 DCD Tier 2. Based upon review of Westinghouse's evaluation, the Commission finds that: (1) Westinghouse identified a reasonably complete set of potential design alternatives to prevent and mitigate severe accidents for the AP1000 design; (2) none of the potential design alternatives are justified on the basis of cost-benefit considerations; and (3) it is unlikely that other design changes would be identified and justified in the future on the basis of cost-benefit considerations, because the estimated core damage frequencies for the AP1000 are very low on an absolute scale. These issues are considered resolved for the AP1000 design.

The EA, upon which the Commission's Finding of No Significant Impact is based, and the AP1000 DCD are available for examination and copying at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The NRC sent a copy of the EA and proposed rule to every State Liaison Officer and no comments were received. Single copies of the EA are also available from Lauren M. Quinones-Navarro, Mailstop O-4D9A, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

## VII. Paperwork Reduction Act Statement

This final rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget, approval number 3150-0151.

The burden to the public for these information collections is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Records and FOIA/Privacy Services Branch (T5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail to [INFCOLLECTS@NRC.GOV](mailto:INFCOLLECTS@NRC.GOV); and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0151), Office of Management and Budget, Washington, DC 20503.

## Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

## VIII. Regulatory Analysis

The NRC has not prepared a regulatory analysis for this final rule. The NRC prepares regulatory analyses for rulemakings that establish generic regulatory requirements applicable to all licensees. Design certifications are not generic rulemakings in the sense that design certifications do not establish standards or requirements with which all licensees must comply. Rather, design certifications are Commission approvals of specific nuclear power plant designs by rulemaking, which then may be voluntarily referenced by applicants for COLs. Furthermore, design certification rulemakings are initiated by an applicant for a design certification, rather than the NRC. Preparation of a regulatory analysis in

<sup>2</sup> The regulatory history of the NRC's design certification reviews is a package of 100 documents that is available in NRC's PERR and in the PDR.

This history spans a 15-year period during which the NRC simultaneously developed the regulatory

standards for reviewing these designs and the form and content of the rules that certified the designs.



this circumstance would not be useful because the design to be certified is proposed by the applicant rather than the NRC. For these reasons, the Commission concludes that preparation of a regulatory analysis is neither required nor appropriate.

### IX. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this final rule will not have a significant economic impact upon a substantial number of small entities. The final rule provides for certification of a nuclear power plant design. Neither the design certification applicant, nor prospective nuclear power plant licensees who reference this design certification rule, fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act, or the Small Business Size Standards set out in regulations issued by the Small Business Administration in 13 CFR part 121. Thus, this rule does not fall within the purview of the Regulatory Flexibility Act.

### X. Backfit Analysis

The Commission has determined that this final rule does not constitute a backfit as defined in the backfit rule (10 CFR 50.109), because this design certification does not impose new or changed requirements on existing 10 CFR part 50 licensees, nor does it impose new or change requirements on existing DCRs in appendices A–C of part 52. Therefore, a backfit analysis was not prepared for this rule.

### XI. Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

### List of Subjects in 10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Incorporation by reference, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

■ For the reasons set out in this SOC and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as

amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 52.

### PART 52—EARLY SITE PERMITS; STANDARD DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS

■ 1. The authority citation for 10 CFR part 52 continues to read as follows:

**Authority:** Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 2. In § 52.8, paragraph (b) is revised to read as follows:

#### § 52.8 Information collection requirements: OMB approval.

\* \* \* \* \*

(b) The approved information collection requirements contained in this part appear in §§ 52.15, 52.17, 52.29, 52.35, 52.45, 52.47, 52.51, 52.57, 52.63, 52.75, 52.77, 52.78, 52.79, 52.89, 52.91, 52.99, and appendices A, B, C, and D to this part.

■ 3. A new Appendix D to 10 CFR part 52 is added to read as follows:

### Appendix D to Part 52—Design Certification Rule for the AP1000 Design

#### I. Introduction

Appendix D constitutes the standard design certification for the AP1000<sup>3</sup> design, in accordance with 10 CFR part 52, subpart B. The applicant for certification of the AP1000 design is Westinghouse Electric Company LLC.

#### II. Definitions

A. *Generic design control document* (generic DCD) means the document containing the Tier 1 and Tier 2 information and generic technical specifications that is incorporated by reference into this appendix.

B. *Generic technical specifications* means the information required by 10 CFR 50.36 and 50.36a for the portion of the plant that is within the scope of this appendix.

C. *Plant-specific DCD* means the document maintained by an applicant or licensee who references this appendix consisting of the information in the generic DCD as modified and supplemented by the plant-specific departures and exemptions made under section VIII of this appendix.

D. *Tier 1* means the portion of the design-related information contained in the generic DCD that is approved and certified by this appendix (Tier 1 information). The design descriptions, interface requirements, and site

parameters are derived from Tier 2 information. Tier 1 information includes:

1. Definitions and general provisions;
2. Design descriptions;
3. Inspections, tests, analyses, and acceptance criteria (ITAAC);
4. Significant site parameters; and
5. Significant interface requirements.

E. *Tier 2* means the portion of the design-related information contained in the generic DCD that is approved but not certified by this appendix (Tier 2 information). Compliance with Tier 2 is required, but generic changes to and plant-specific departures from Tier 2 are governed by section VIII of this appendix. Compliance with Tier 2 provides a sufficient, but not the only acceptable, method for complying with Tier 1. Compliance methods differing from Tier 2 must satisfy the change process in section VIII of this appendix. Regardless of these differences, an applicant or licensee must meet the requirement in paragraph III.B to reference Tier 2 when referencing Tier 1. Tier 2 information includes:

1. Information required by 10 CFR 52.47, with the exception of generic TS, the design-specific PRA, the evaluation of SAMDAs, and conceptual design information;
2. Information required for a final safety analysis report under 10 CFR 50.34;
3. Supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met; and
4. COL action items (COL information), which identify certain matters that shall be addressed in the site-specific portion of the FSAR by an applicant who references this appendix. These items constitute information requirements but are not the only acceptable set of information in the FSAR. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in the FSAR. After issuance of a construction permit or COL, these items are not requirements for the licensee unless such items are restated in the FSAR.

5. The investment protection short-term availability controls in section 16.3 of the DCD.

F. *Tier 2\** means the portion of the Tier 2 information, designated as such in the generic DCD, which is subject to the change process in paragraph VIII.B.6 of this appendix. This designation expires for some *Tier 2\** information under paragraph VIII.B.6.

G. *Departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses* means:

1. Changing any of the elements of the method described in the plant-specific DCD unless the results of the analysis are conservative or essentially the same; or
2. Changing from a method described in the plant-specific DCD to another method unless that method has been approved by the NRC for the intended application.

H. All other terms in this appendix have the meaning set out in 10 CFR 50.2, 10 CFR 52.3, or section 11 of the Atomic Energy Act of 1954, as amended, as applicable.

<sup>3</sup> AP1000 is a trademark of Westinghouse Electric Company LLC.

### III. Scope and Contents

A. Tier 1, Tier 2 (including the investment protection short-term availability controls in Section 16.3), and the generic TS in the AP1000 DCD (Revision 15, dated December 8, 2005) are approved for incorporation by reference by the Director of the Office of the Federal Register on February 27, 2006 under 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the generic DCD may be obtained from Ronald P. Vijuk, Manager, Passive Plant Engineering, Westinghouse Electric Company, P.O. Box 355, Pittsburgh, Pennsylvania 15230-0355. A copy of the generic DCD is also available for examination and copying at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852. Copies are available for examination at the NRC Library, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, telephone (301) 415-5610, e-mail [LIBRARY@NRC.GOV](mailto:LIBRARY@NRC.GOV) or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030 or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

B. An applicant or licensee referencing this appendix, in accordance with Section IV of this appendix, shall incorporate by reference and comply with the requirements of this appendix, including Tier 1, Tier 2 (including the investment protection short-term availability controls in section 16.3 of the DCD), and the generic TS except as otherwise provided in this appendix. Conceptual design information in the generic DCD and the evaluation of SAMDAs in appendix 1B of the generic DCD are not part of this appendix.

C. If there is a conflict between Tier 1 and Tier 2 of the DCD, then Tier 1 controls.

D. If there is a conflict between the generic DCD and either the application for design certification of the AP1000 design or NUREG-1793, "Final Safety Evaluation Report Related to Certification of the AP1000 Standard Design," (FSER) and Supplement No. 1, then the generic DCD controls.

E. Design activities for structures, systems, and components that are wholly outside the scope of this appendix may be performed using site characteristics, provided the design activities do not affect the DCD or conflict with the interface requirements.

### IV. Additional Requirements and Restrictions

A. An applicant for a license that wishes to reference this appendix shall, in addition to complying with the requirements of 10 CFR 52.77, 52.78, and 52.79, comply with the following requirements:

1. Incorporate by reference, as part of its application, this appendix.

2. Include, as part of its application:

a. A plant-specific DCD containing the same type of information and using the same organization and numbering as the generic DCD for the AP1000 design, as modified and supplemented by the applicant's exemptions and departures;

b. The reports on departures from and updates to the plant-specific DCD required by paragraph X.B of this appendix;

c. Plant-specific TS, consisting of the generic and site-specific TS that are required by 10 CFR 50.36 and 50.36a;

d. Information demonstrating compliance with the site parameters and interface requirements;

e. Information that addresses the COL action items; and

f. Information required by 10 CFR 52.47(a) that is not within the scope of this appendix.

3. Physically include, in the plant-specific DCD, the proprietary and safeguards information referenced in the AP1000 DCD.

B. The Commission reserves the right to determine in what manner this appendix may be referenced by an applicant for a construction permit or operating license under part 50 of this chapter.

### V. Applicable Regulations

A. Except as indicated in paragraph B of this section, the regulations that apply to the AP1000 design are in 10 CFR parts 20, 50, 73, and 100, codified as of January 23, 2006, that are applicable and technically relevant, as described in the FSER (NUREG-1793) and Supplement No. 1.

B. The AP1000 design is exempt from portions of the following regulations:

1. Paragraph (f)(2)(iv) of 10 CFR 50.34—Plant Safety Parameter Display Console;

2. Paragraph (c)(1) of 10 CFR 50.62—Auxiliary (or emergency) feedwater system; and

3. Appendix A to 10 CFR part 50, GDC 17—Second offsite power supply circuit.

### VI. Issue Resolution

A. The Commission has determined that the structures, systems, components, and design features of the AP1000 design comply with the provisions of the Atomic Energy Act of 1954, as amended, and the applicable regulations identified in section V of this appendix; and therefore, provide adequate protection to the health and safety of the public. A conclusion that a matter is resolved includes the finding that additional or alternative structures, systems, components, design features, design criteria, testing, analyses, acceptance criteria, or justifications are not necessary for the AP1000 design.

B. The Commission considers the following matters resolved within the meaning of 10 CFR 52.63(a)(4) in subsequent proceedings for issuance of a COL, amendment of a COL, or renewal of a COL, proceedings held under 10 CFR 52.103, and enforcement proceedings involving plants referencing this appendix:

1. All nuclear safety issues, except for the generic TS and other operational requirements, associated with the information in the FSER and Supplement No. 1, Tier 1, Tier 2 (including referenced information, which the context indicates is intended as requirements, and the investment protection short-term availability controls in section 16.3 of the DCD), and the rulemaking record for certification of the AP1000 design;

2. All nuclear safety and safeguards issues associated with the information in proprietary and safeguards documents, referenced and in context, are intended as requirements in the generic DCD for the AP1000 design;

3. All generic changes to the DCD under and in compliance with the change processes in sections VIII.A.1 and VIII.B.1 of this appendix;

4. All exemptions from the DCD under and in compliance with the change processes in sections VIII.A.4 and VIII.B.4 of this appendix, but only for that plant;

5. All departures from the DCD that are approved by license amendment, but only for that plant;

6. Except as provided in paragraph VIII.B.5.f of this appendix, all departures from Tier 2 under and in compliance with the change processes in paragraph VIII.B.5 of this appendix that do not require prior NRC approval, but only for that plant;

7. All environmental issues concerning SAMDAs associated with the information in the NRC's EA for the AP1000 design and Appendix 1B of the generic DCD, for plants referencing this appendix whose site parameters are within those specified in the SAMDA evaluation.

C. The Commission does not consider operational requirements for an applicant or licensee who references this appendix to be matters resolved within the meaning of 10 CFR 52.63(a)(4). The Commission reserves the right to require operational requirements for an applicant or licensee who references this appendix by rule, regulation, order, or license condition.

D. Except under the change processes in section VIII of this appendix, the Commission may not require an applicant or licensee who references this appendix to:

1. Modify structures, systems, components, or design features as described in the generic DCD;

2. Provide additional or alternative structures, systems, components, or design features not discussed in the generic DCD; or

3. Provide additional or alternative design criteria, testing, analyses, acceptance criteria, or justification for structures, systems, components, or design features discussed in the generic DCD.

E.1. Persons who wish to review proprietary and safeguards information or other secondary references in the AP1000 DCD, in order to request or participate in the hearing required by 10 CFR 52.85 or the hearing provided under 10 CFR 52.103, or to request or participate in any other hearing relating to this appendix in which interested persons have adjudicatory hearing rights, shall first request access to such information from Westinghouse. The request must state with particularity:

a. The nature of the proprietary or other information sought;

b. The reason why the information currently available to the public in the NRC's public document room is insufficient;

c. The relevance of the requested information to the hearing issue(s) which the person proposes to raise; and

d. A showing that the requesting person has the capability to understand and utilize the requested information.

2. If a person claims that the information is necessary to prepare a request for hearing, the request must be filed no later than 15 days after publication in the **Federal Register** of the notice required either by 10 CFR 52.85

or 10 CFR 52.103. If Westinghouse declines to provide the information sought, Westinghouse shall send a written response within ten (10) days of receiving the request to the requesting person setting forth with particularity the reasons for its refusal. The person may then request the Commission (or presiding officer, if a proceeding has been established) to order disclosure. The person shall include copies of the original request (and any subsequent clarifying information provided by the requesting party to the applicant) and the applicant's response. The Commission and presiding officer shall base their decisions solely on the person's original request (including any clarifying information provided by the requesting person to Westinghouse), and Westinghouse's response. The Commission and presiding officer may order Westinghouse to provide access to some or all of the requested information, subject to an appropriate non-disclosure agreement.

## VII. Duration of This Appendix

This appendix may be referenced for a period of 15 years from February 27, 2006, except as provided for in 10 CFR 52.55(b) and 52.57(b). This appendix remains valid for an applicant or licensee who references this appendix until the application is withdrawn or the license expires, including any period of extended operation under a renewed license.

## VIII. Processes for Changes and Departures

### A. Tier 1 Information

1. Generic changes to Tier 1 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 1 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs A.3 or A.4 of this section.

3. Departures from Tier 1 information that are required by the Commission through plant-specific orders are governed by the requirements in 10 CFR 52.63(a)(3).

4. Exemptions from Tier 1 information are governed by the requirements in 10 CFR 52.63(b)(1) and 52.97(b). The Commission will deny a request for an exemption from Tier 1, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design.

### B. Tier 2 Information

1. Generic changes to Tier 2 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 2 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs B.3, B.4, B.5, or B.6 of this section.

3. The Commission may not require new requirements on Tier 2 information by plant-specific order while this appendix is in effect under 10 CFR 52.55 or 52.61, unless:

a. A modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the

time this appendix was approved, as set forth in Section V of this appendix, or to ensure adequate protection of the public health and safety or the common defense and security; and

b. Special circumstances as defined in 10 CFR 50.12(a) are present.

4. An applicant or licensee who references this appendix may request an exemption from Tier 2 information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The Commission will deny a request for an exemption from Tier 2, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design. The grant of an exemption to an applicant must be subject to litigation in the same manner as other issues material to the license hearing. The grant of an exemption to a licensee must be subject to an opportunity for a hearing in the same manner as license amendments.

5. a. An applicant or licensee who references this appendix may depart from Tier 2 information, without prior NRC approval, unless the proposed departure involves a change to or departure from Tier 1 information, Tier 2\* information, or the TS, or requires a license amendment under paragraphs B.5.b or B.5.c of this section. When evaluating the proposed departure, an applicant or licensee shall consider all matters described in the plant-specific DCD.

b. A proposed departure from Tier 2, other than one affecting resolution of a severe accident issue identified in the plant-specific DCD, requires a license amendment if it would:

(1) Result in more than a minimal increase in the frequency of occurrence of an accident previously evaluated in the plant-specific DCD;

(2) Result in more than a minimal increase in the likelihood of occurrence of a malfunction of a structure, system, or component (SSC) important to safety and previously evaluated in the plant-specific DCD;

(3) Result in more than a minimal increase in the consequences of an accident previously evaluated in the plant-specific DCD;

(4) Result in more than a minimal increase in the consequences of a malfunction of an SSC important to safety previously evaluated in the plant-specific DCD;

(5) Create a possibility for an accident of a different type than any evaluated previously in the plant-specific DCD;

(6) Create a possibility for a malfunction of an SSC important to safety with a different result than any evaluated previously in the plant-specific DCD;

(7) Result in a design basis limit for a fission product barrier as described in the plant-specific DCD being exceeded or altered; or

(8) Result in a departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses.

c. A proposed departure from Tier 2 affecting resolution of a severe accident issue identified in the plant-specific DCD, requires a license amendment if:

(1) There is a substantial increase in the probability of a severe accident such that a particular severe accident previously reviewed and determined to be not credible could become credible; or

(2) There is a substantial increase in the consequences to the public of a particular severe accident previously reviewed.

d. If a departure requires a license amendment under paragraph B.5.b or B.5.c of this section, it is governed by 10 CFR 50.90.

e. A departure from Tier 2 information that is made under paragraph B.5 of this section does not require an exemption from this appendix.

f. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an applicant or licensee who references this appendix has not complied with paragraph VIII.B.5 of this appendix when departing from Tier 2 information, may petition to admit into the proceeding such a contention. In addition to compliance with the general requirements of 10 CFR 2.309, the petition must demonstrate that the departure does not comply with paragraph VIII.B.5 of this appendix. Further, the petition must demonstrate that the change bears on an asserted noncompliance with an ITAAC acceptance criterion in the case of a 10 CFR 52.103 preoperational hearing, or that the change bears directly on the amendment request in the case of a hearing on a license amendment. Any other party may file a response. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. The Commission may admit such a contention if it determines the petition raises a genuine issue of material fact regarding compliance with paragraph VIII.B.5 of this appendix.

6. a. An applicant who references this appendix may not depart from Tier 2\* information, which is designated with italicized text or brackets and an asterisk in the generic DCD, without NRC approval. The departure will not be considered a resolved issue, within the meaning of Section VI of this appendix and 10 CFR 52.63(a)(4).

b. A licensee who references this appendix may not depart from the following Tier 2\* matters without prior NRC approval. A request for a departure will be treated as a request for a license amendment under 10 CFR 50.90.

(1) Maximum fuel rod average burn-up.

(2) Fuel principal design requirements.

(3) Fuel criteria evaluation process.

(4) Fire areas.

(5) Human factors engineering.

(6) Small-break loss-of-coolant accident (LOCA) analysis methodology.

c. A licensee who references this appendix may not, before the plant first achieves full power following the finding required by 10 CFR 52.103(g), depart from the following Tier 2\* matters except under paragraph B.6.b of this section. After the plant first achieves full power, the following Tier 2\* matters revert to Tier 2 status and are subject to the departure provisions in paragraph B.5 of this section.

- (1) Nuclear Island structural dimensions.
- (2) American Society of Mechanical Engineers Boiler & Pressure Vessel Code (ASME Code), Section III, and Code Case-284.
- (3) Design Summary of Critical Sections.
- (4) American Concrete Institute (ACI) 318, ACI 349, American National Standards Institute/American Institute of Steel Construction (ANSI/AISC)–690, and American Iron and Steel Institute (AISI), “Specification for the Design of Cold Formed Steel Structural Members, Part 1 and 2,” 1996 Edition and 2000 Supplement.
- (5) Definition of critical locations and thicknesses.
- (6) Seismic qualification methods and standards.
- (7) Nuclear design of fuel and reactivity control system, except burn-up limit.
- (8) Motor-operated and power-operated valves.
- (9) Instrumentation and control system design processes, methods, and standards.
- (10) Passive residual heat removal (PRHR) natural circulation test (first plant only).
- (11) Automatic depressurization system (ADS) and core make-up tank (CMT) verification tests (first three plants only).
- (12) Polar crane parked orientation.
- (13) Piping design acceptance criteria.
- (14) Containment vessel design parameters.
- d. Departures from Tier 2\* information that are made under paragraph B.6 of this section do not require an exemption from this appendix.

#### C. Operational Requirements

1. Generic changes to generic TS and other operational requirements that were completely reviewed and approved in the design certification rulemaking and do not require a change to a design feature in the generic DCD are governed by the requirements in 10 CFR 50.109. Generic changes that require a change to a design feature in the generic DCD are governed by the requirements in paragraphs A or B of this section.
2. Generic changes to generic TS and other operational requirements are applicable to all applicants who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs C.3 or C.4 of this section.
3. The Commission may require plant-specific departures on generic TS and other operational requirements that were completely reviewed and approved, provided a change to a design feature in the generic DCD is not required and special circumstances as defined in 10 CFR 2.335 are present. The Commission may modify or supplement generic TS and other operational requirements that were not completely reviewed and approved or require additional TS and other operational requirements on a plant-specific basis, provided a change to a design feature in the generic DCD is not required.
4. An applicant who references this appendix may request an exemption from the generic TS or other operational requirements. The Commission may grant such a request only if it determines that the exemption will

comply with the requirements of 10 CFR 50.12(a). The grant of an exemption must be subject to litigation in the same manner as other issues material to the license hearing.

5. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license, or for operation under 10 CFR 52.103(a), who believes that an operational requirement approved in the DCD or a TS derived from the generic TS must be changed may petition to admit such a contention into the proceeding. The petition must comply with the general requirements of 10 CFR 2.309 and must demonstrate why special circumstances as defined in 10 CFR 2.335 are present, or demonstrate compliance with the Commission's regulations in effect at the time this appendix was approved, as set forth in section V of this appendix. Any other party may file a response to the petition. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. All other issues with respect to the plant-specific TS or other operational requirements are subject to a hearing as part of the license proceeding.

6. After issuance of a license, the generic TS have no further effect on the plant-specific TS. Changes to the plant-specific TS will be treated as license amendments under 10 CFR 50.90.

#### IX. Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)

A.1 An applicant or licensee who references this appendix shall perform and demonstrate conformance with the ITAAC before fuel load. With respect to activities subject to an ITAAC, an applicant for a license may proceed at its own risk with design and procurement activities. A licensee may also proceed at its own risk with design, procurement, construction, and preoperational activities, even though the NRC may not have found that any particular ITAAC has been satisfied.

2. The licensee who references this appendix shall notify the NRC that the required inspections, tests, and analyses in the ITAAC have been successfully completed and that the corresponding acceptance criteria have been met.

3. If an activity is subject to an ITAAC and the applicant or licensee who references this appendix has not demonstrated that the ITAAC has been satisfied, the applicant or licensee may either take corrective actions to successfully complete that ITAAC, request an exemption from the ITAAC under section VIII of this appendix and 10 CFR 52.97(b), or petition for rulemaking to amend this appendix by changing the requirements of the ITAAC, under 10 CFR 2.802 and 52.97(b). Such rulemaking changes to the ITAAC must meet the requirements of paragraph VIII.A.1 of this appendix.

B.1 The NRC shall ensure that the required inspections, tests, and analyses in the ITAAC are performed. The NRC shall verify that the inspections, tests, and analyses referenced by the licensee have been successfully completed and, based solely thereon, find

that the prescribed acceptance criteria have been met. At appropriate intervals during construction, the NRC shall publish notices of the successful completion of ITAAC in the **Federal Register**.

2. Under 10 CFR 52.99 and 52.103(g), the Commission shall find that the acceptance criteria in the ITAAC for the license are met before fuel load.

3. After the Commission has made the finding required by 10 CFR 52.103(g), the ITAAC do not, by virtue of their inclusion within the DCD, constitute regulatory requirements either for licensees or for renewal of the license; except for specific ITAAC, which are the subject of a section 103(a) hearing, their expiration will occur upon final Commission action in such a proceeding. However, subsequent modifications must comply with the Tier 1 and Tier 2 design descriptions in the plant-specific DCD unless the licensee has complied with the applicable requirements of 10 CFR 52.97 and section VIII of this appendix.

#### X. Records and Reporting

##### A. Records

1. The applicant for this appendix shall maintain a copy of the generic DCD that includes all generic changes to Tier 1, Tier 2, and the generic TS and other operational requirements. The applicant shall maintain the proprietary and safeguards information referenced in the generic DCD for the period that this appendix may be referenced, as specified in section VII of this appendix.

2. An applicant or licensee who references this appendix shall maintain the plant-specific DCD to accurately reflect both generic changes to the generic DCD and plant-specific departures made under section VIII of this appendix throughout the period of application and for the term of the license (including any period of renewal).

3. An applicant or licensee who references this appendix shall prepare and maintain written evaluations which provide the bases for the determinations required by section VIII of this appendix. These evaluations must be retained throughout the period of application and for the term of the license (including any period of renewal).

##### B. Reporting

1. An applicant or licensee who references this appendix shall submit a report to the NRC containing a brief description of any plant-specific departures from the DCD, including a summary of the evaluation of each. This report must be filed in accordance with the filing requirements applicable to reports in 10 CFR 50.4.

2. An applicant or licensee who references this appendix shall submit updates to its DCD, which reflect the generic changes to and plant-specific departures from the generic DCD made under section VIII of this appendix. These updates shall be filed under the filing requirements applicable to final safety analysis report updates in 10 CFR 50.4 and 50.71(e).

3. The reports and updates required by paragraphs X.B.1 and X.B.2 must be submitted as follows:

- a. On the date that an application for a license referencing this appendix is

submitted, the application must include the report and any updates to the generic DCD.

b. During the interval from the date of application for a license to the date the Commission makes its findings under 10 CFR 52.103(g), the report must be submitted semi-annually. Updates to the plant-specific DCD must be submitted annually and may be submitted along with amendments to the application.

c. After the Commission has made its finding under 10 CFR 52.103(g), the reports and updates to the plant-specific DCD must be submitted, along with updates to the site-specific portion of the final safety analysis report for the facility, at the intervals required by 10 CFR 50.59(d)(2) and 50.71(e)(4), respectively, or at shorter intervals as specified in the license.

Dated at Rockville, Maryland, this 23rd day of January 2006.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 06-788 Filed 1-26-06; 8:45 am]

**BILLING CODE 7590-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2005-20034; Directorate Identifier 2004-NM-178-AD; Amendment 39-14463; AD 2006-02-11]

**RIN 2120-AA64**

#### **Airworthiness Directives; McDonnell Douglas Model DC-10-10, DC-10-10F, DC-10-15, DC-10-30, DC-10-30F (KC-10A and KDC-10), DC-10-40, DC-10-40F, MD-10-10F, MD-10-30F, MD-11, and MD-11F Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain McDonnell Douglas transport category airplanes. This AD requires doing repetitive detailed inspections for accumulation of debris (blockage) in the drain holes of the pitot tubes, and cleaning the hole if any evidence of debris is found. This AD results from reports of blocked drain holes of the pitot tubes. We are issuing this AD to prevent blocked drain holes of the pitot tubes, which could result in the accumulation of water in the pitot-static system and consequent failure of that system. Failure of the pitot-static system could result in erroneous airspeed indications in the cockpit and consequent loss of airspeed control.

**DATES:** This AD becomes effective March 3, 2006.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL-401, Washington, DC.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024), for service information identified in this AD.

#### **FOR FURTHER INFORMATION CONTACT:**

Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5350; fax (562) 627-5210.

#### **SUPPLEMENTARY INFORMATION:**

##### **Examining the Docket**

You may examine the airworthiness directive (AD) docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

##### **Discussion**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain McDonnell Douglas Model DC-10-10, DC-10-10F, DC-10-15, DC-10-30, DC-10-30F (KC-10A and KDC-10), DC-10-40, DC-10-40F, MD-10-10F, MD-10-30F, MD-11, and MD-11F airplanes. That NPRM was published in the **Federal Register** on January 12, 2005 (70 FR 2062). That NPRM proposed to require doing repetitive detailed inspections for accumulation of debris (blockage) of the drain holes of the pitot tubes, and cleaning the hole if any evidence of debris is found.

##### **Comments**

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

##### **Support for the NPRM**

One commenter supports the NPRM.

##### **Requests To Extend Repetitive Interval**

Three commenters request that the 650-flight-hour interval for the repetitive detailed inspections in paragraph (f) of the NPRM be increased. One commenter, the airplane manufacturer, states that it originally recommended an interval of 650 flight hours because that was believed to be greater than the A-check interval in use at that time. The commenter points out that an A-check for some operators is now approaching 1,000 flight hours and recommends that interval. The commenter also states that inspection data, which cover as much as ten years, show that there have been no findings of blockage of the holes of the pitot tube drain tube since implementation of repetitive inspections.

A second commenter states that it has performed the proposed repetitive inspections on its fleet every 2,000 flight hours since July 1999. The results of an analysis conducted by the commenter revealed no events of all three pitot tube drains being blocked and only two events where the drain holes on one of the three pitot tubes were blocked. Based on this service history, the commenter does not support a repetitive interval of less than 2,000 flight hours.

A third commenter states that an interval shorter than an A-check would require operators to perform the proposed visual and forced-air inspections during turnaround of the airplane. The commenter's normal turnaround time is 2 hours. The commenter further states that the proposed visual and forced air inspections take at least one hour, and that it takes at least an additional 20 minutes for the pitot probes to cool down. In addition, the commenter states that its airplanes have never had blockage through calcium build-up; however, it has heard from other operators that calcium blockage takes more than a year to build up. Therefore, the commenter concludes that it would be costly to do the proposed inspections during a turnaround and suggests an interval of at least 850 flight hours, preferably 1,000 flight hours.

We agree that the repetitive inspection interval can be extended somewhat. Since issuance of the NPRM, we have analyzed further in-service data from the airplane manufacturer and failure rate data for a blocked pitot tube from DC-10, MD-10, and MD-11 service history, which included 22 reported events.

The airplane manufacturer performed an analysis using four maintenance intervals: 650, 700, 1,000, and 1,500 flight hours. The results of the analysis



**Amendment to Licensing Process (Excerpt)**  
**72 Fed. Reg. 49352, 49426**





# NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 2, 10, 19, 20, 21, 25, 26, 50, 51, 52, 54, 55, 72, 73, 75, 95, 140, 170, and 171

RIN 3150-AG24

## Licenses, Certifications, and Approvals for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations by revising the provisions applicable to the licensing and approval processes for nuclear power plants (i.e., early site permit, standard design approval, standard design certification, combined license, and manufacturing license). These amendments clarify the applicability of various requirements to each of the licensing processes by making necessary conforming amendments throughout the NRC's regulations to enhance the NRC's regulatory effectiveness and efficiency in implementing its licensing and approval processes. The NRC has considered and resolved the public comments.

**DATES:** The effective date is September 27, 2007.

**FOR FURTHER INFORMATION CONTACT:** Nanette V. Gilles, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone 301-415-1180, e-mail [nvg@nrc.gov](mailto:nvg@nrc.gov).

### SUPPLEMENTARY INFORMATION:

- I. Background
  - A. Development of Proposed Rule
  - B. Publication of Revised Proposed Rule
- II. Overview of Public Comments
- III. Reorganization of Part 52 and Conforming Changes in the NRC's Regulations
- IV. Responses to Specific Requests for Comments
- V. Discussion of Substantive Changes and Responses to Significant Comments
  - A. Introduction
  - B. Testing Requirements for Advanced Reactors
  - C. Changes to 10 CFR Part 52
  - D. Changes to 10 CFR Part 50
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  - P. Changes to 10 CFR Part 72
  - Q. Changes to 10 CFR Part 73

- R. Change to 10 CFR Part 75
- S. Changes to 10 CFR Part 95
- T. Changes to 10 CFR Part 140
- U. Changes to 10 CFR Part 170
- V. Changes to 10 CFR Part 171
- VI. Section-by-Section Analysis
- VII. Availability of Documents
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- IX. Voluntary Consensus Standards
- X. Environmental Impact—Categorical Exclusion
- XI. Paperwork Reduction Act Statement
- XII. Regulatory Analysis
- XIII. Regulatory Flexibility Certification
- XIV. Backfit Analysis
- XV. Congressional Review Act

## I. Background

### A. Development of Proposed Rule

On July 3, 2003 (68 FR 40026), the NRC published a proposed rulemaking that would clarify and/or correct miscellaneous parts of the NRC's regulations; update 10 CFR part 52 in its entirety; and incorporate stakeholder comments. On March 13, 2006 (71 FR 12781), the NRC issued a revised proposed rule that would rewrite part 52, make changes throughout the Commission's regulations to ensure that all licensing processes in part 52 are addressed, and clarify the applicability of various requirements to each of the processes in part 52 (i.e., early site permit, standard design approval, standard design certification, combined license, and manufacturing license). This proposed rule superseded the July 3, 2003, proposed rule.

The NRC issued 10 CFR part 52 on April 18, 1989 (54 FR 15372), to reform the NRC's licensing process for future nuclear power plants. The rule added alternative licensing processes in 10 CFR part 52 for early site permits, standard design certifications, and combined licenses. These were additions to the two-step licensing process that already existed in 10 CFR part 50. The processes in 10 CFR part 52 allow for resolving safety and environmental issues early in licensing proceedings and were intended to enhance the safety and reliability of nuclear power plants through standardization. Subsequently, the NRC certified four nuclear power plant designs under subpart B of 10 CFR part 52—the U.S. Advanced Boiling Water Reactor (ABWR) (62 FR 25800; May 12, 1997), the System 80+ (62 FR 27840; May 21, 1997), the AP600 (64 FR 72002; December 23, 1999), and the AP1000 (71 FR 4464; January 27, 2006). These design certifications are codified in appendices A, B, C, and D of 10 CFR part 52, respectively.

The NRC planned to update 10 CFR part 52 after using the standard design certification process. The proposed

rulemaking action began with the issuance of SECY-98-282, "Part 52 Rulemaking Plan," on December 4, 1998. The Commission issued a staff requirements memorandum (SRM) on January 14, 1999 (SRM on SECY-98-282), approving the NRC staff's plan for revising 10 CFR part 52. Subsequently, the NRC obtained considerable stakeholder comment on its planned action, conducted three public meetings on the proposed rulemaking, and twice posted draft rule language on the NRC's rulemaking Web site before issuance of the July 2003 proposed rule.

### B. Publication of Revised Proposed Rule

A number of factors led the NRC to question whether the July 2003 proposed rule would meet the NRC's objective of improving the effectiveness of its processes for licensing future nuclear power plants. First, public comments identified several concerns about whether the proposed rule adequately addressed the relationship between part 50 and part 52, and whether it clearly specified the applicable regulatory requirements for each of the licensing and approval processes in part 52. In addition, as a result of the NRC staff's review of the first three early site permit applications, the staff gained additional insights into the early site permit process. The NRC also had the benefit of public meetings with external stakeholders on NRC staff guidance for the early site permit and combined license processes. As a result, the NRC decided that a substantial rewrite and expansion of the July 2003 proposed rulemaking was desirable so that the agency may more effectively and efficiently implement the licensing and approval processes for future nuclear power plants under part 52.

Accordingly, the Commission decided to revise the July 2003 proposed rule and published a revised proposed rule for public comment on March 13, 2006. This revised proposed rule contained a rewrite of part 52, as well as changes throughout the NRC's regulations, to ensure that all licensing and approval processes in part 52 are addressed, and to clarify the applicability of various requirements to each of the processes in part 52. In light of the substantial rewrite of the July 2003 proposed rule, the expansion of the scope of the rulemaking, and the NRC's decision to publish the revised proposed rule for public comment, the NRC decided that developing responses to comments received on the July 2003 proposed rule would not be an effective use of agency resources. The NRC requested that commenters on the July 2003 proposed rule who believed that their earlier

Accordingly, the NRC revised § 50.55(e) to specifically apply its provisions to holders of manufacturing licenses.

#### *K. Change to 10 CFR Part 25*

##### **1. Section 25.35, Classified Visits**

Part 25 sets forth the NRC's requirements governing the granting of access authorization to classified information to certain individuals. Section 52.35, which requires that licensees and certificate holders minimize the number of classified visits, did not, by its terms, apply to applicants for standard design certifications, and applicants for or holders of standard design approvals. Accordingly, § 25.35 is revised to refer to an applicant for a standard design certification under part 52 (including the applicant after the NRC adopts a final standard design certification rule), and the applicant for or holder of a standard design approval under part 52.

#### *L. Changes to 10 CFR Part 26*

##### **1. Section 26.2, Scope, § 26.10, General Performance Objectives; and Appendix A to Part 26**

Part 26, which sets forth the NRC's requirements governing fitness-for-duty, currently uses a two-part regulatory regime for the application of fitness-for-duty requirements. A holder of an operating license for a nuclear power plant is required to implement all of the provisions in part 26. By contrast, a holder of a construction permit is required to comply with §§ 26.10, 26.20, 26.23, 26.70, and 26.73, and also implement a chemical testing program, including random tests, and make provisions for employee assistance programs, imposition of sanctions, appeals procedures, the protection of information, and record keeping.

The NRC has extended the applicability of parts 26 to 52, in keeping with the existing two-part regulatory regime, so that the full array of requirements in part 26 apply to a combined license holder after the date that the NRC authorizes makes the finding under § 52.103(g), analogous to holder of an operating license under part 50. By contrast, holders of combined licenses, before the date that the NRC makes the § 52.103(g) findings, are required to comply with the part 26 provisions currently applicable to construction permit holders. Similarly, holders of manufacturing licenses under subpart F of part 52 are treated the same as holders of construction permits. Finally, persons authorized to conduct the limited construction activities allowed under § 50.10(e)(3) are also treated the same as a construction

permit holder. The final rule accomplishes this by: (1) Revising § 26.2(a) to refer to combined license holders after the date that the NRC makes the finding under § 52.103(g); (2) revising § 26.2(c) to refer to a holder of a combined license before the date that the NRC makes the finding under § 52.103(g), a holder of a manufacturing license under subpart F of part 52, and a person authorized to conduct the activities under § 50.10(e)(3); (3) revising § 26.10(a) to refer to the personnel of a holder of a manufacturing license and those authorized to conduct the activities under § 50.10(e)(3); and (4) revising appendix A to part 26, paragraph 1.1(1) to include a reference to a holder of combined license after the date that the NRC makes the finding under § 52.103(g).

The NRC believes that part 26 need not be extended to cover applicants for and holders of early site permits, standard design approvals, and applicants for standard design certifications. These activities present less of a concern with respect to public health and safety, and common defense and security, as compared with construction permits, manufacturing licenses, operating licenses, and combined licenses. None of these regulatory approvals or design certification regulations authorize the construction, manufacture, or operation of a facility, nor do they authorize possession of special nuclear material (SNM). The adverse impacts on public health and safety or common defense and security attributable to any fitness-for-duty issues are likely to be of a much lower level of significance, as compared to issues that may occur during construction, manufacture, operation, or possession of SNM. The NRC believes that the potential benefits of imposing the fitness-for-duty requirements are not justified in view of the regulatory burden to be imposed upon such applicants and holders. Accordingly, these requirements will not be imposed on applicants for and holders of standard design approvals and applicants for standard design certifications under part 52.

#### *M. Changes to 10 CFR Part 51*

The NRC is making several conforming changes to part 51 to clarify the environmental protection regulations applicable to the various part 52 licensing processes.

##### **NEPA Compliance for Design Certifications**

For each of the four design certification rules in appendices A, B, C,

and D of part 52, the NRC prepared an environmental assessment which: (1) Provides the bases for a Commission finding of no significant environmental impact (FONSI) for issuance of the design certification regulation; and (2) identifies and addresses the need for incorporating SAMDAs into the design certification rule. Based upon this experience, the NRC is making changes to part 51 to accomplish two objectives.

First, the NRC is eliminating the need for the NRC to prepare essentially repetitive discussions in environmental assessments supporting a FONSI on issuance of a final standard design certification regulation. Each of the environmental assessments and FONSIs prepared to date conclude that there is no significant environmental impact associated with NRC issuance of a final design certification regulation because a design certification does not authorize either the construction or operation of a nuclear power facility. Design certification represents the NRC's pre-approval of the design for the nuclear power facility, but does not authorize manufacture or construction. For the design certification to have practical effect, it must be referenced in an application for a combined license. The NRC is revising part 51 to eliminate the need for the NRC to make repetitive findings of no significant environmental impact for future design certifications and amendments to design certifications.

Second, the NRC is requiring that SAMDAs be addressed at the design certification stage. SAMDAs are alternative design features for preventing and mitigating severe accidents, which may be considered for incorporation into the proposed design. The SAMDA analysis is that element of the severe accident mitigation alternatives analysis dealing with design and hardware issues. At the design certification stage, the NRC's review is directed at determining if there are any cost beneficial SAMDAs that should be incorporated into the design, and if it is likely that future design changes would be identified and determined to be cost-justified in the future based on cost/benefit considerations. It is most cost effective to incorporate SAMDAs into the design at the design certification stage. Retrofitting a SAMDA into a design certification once site-specific design and engineering for a nuclear power facility have been completed would increase the cost of implementing a SAMDA. The retrofitting costs continue to increase in ensuing stages of facility construction and operation. For these reasons, the NRC believes that environmental

**Notice of Hearing for Vogtle 3&4 COL  
73 Fed. Reg. 53446-02**



- Astrophysics Division Update.
- Joint Dark Energy Mission Update.
- Astrophysics Goals Overview.
- Astrophysics on the Moon Discussion.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register. For further information, contact Marian Norris via e-mail at [mnorris@nasa.gov](mailto:mnorris@nasa.gov) or by telephone at (202) 358-4452.

**P. Diane Rausch,**  
*Advisory Committee Management Officer,  
 National Aeronautics and Space  
 Administration.*

[FR Doc. E8-21606 Filed 9-15-08; 8:45 am]

BILLING CODE 7510-13-P

## NUCLEAR REGULATORY COMMISSION

### Draft Regulatory Guide: Issuance, Availability

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Issuance and Availability of Draft Regulatory Guide, DG-3035.

**FOR FURTHER INFORMATION CONTACT:**  
 Breeda Reilly, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: (301) 492-3110 or e-mail to [Breeda.Reilly@nrc.gov](mailto:Breeda.Reilly@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

#### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft regulatory guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), entitled, "General Fire Protection Guide for Plutonium Processing and Fuel Fabrication Plants," is temporarily identified by its task number, DG-3035, which should be mentioned in all related correspondence. DG-3035 is the proposed Revision 1 of Regulatory Guide 3.16, dated January 1974.

DG-3035 identifies NUREG-1718, "Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility," issued August 2000 (SRP), as the

method that the staff of the NRC considers acceptable for use in complying with Title 10, Section 70.23(a)(3) and (a)(4), of the Code of Federal Regulations (10 CFR 70.23(a)(3) and (a)(4)) with respect to fire protection, and with 10 CFR 70.61, "Performance Requirements," with respect to potential radiological consequences from fires, for a mixed oxide (MOX) facility.

The NRC regulations in 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material," establish procedures and criteria for the licensing of special nuclear material (SNM). In 10 CFR Part 70, Subpart D, "License Applications," the regulations specify the contents of license applications and the requirements for approving applications. As stipulated in 10 CFR 70.23(a) and (b), the requirements for approval include that the applicant's proposed equipment, facilities, and procedures be adequate to protect health and minimize danger to life or property.

#### II. Further Information

The NRC staff is soliciting comments on DG-3035. Comments may be accompanied by relevant information or supporting data, and should mention DG-3035 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Personal information will not be removed from the comments. Comments may be submitted by any of the following methods:

1. *Mail to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.
2. *E-mail to:* [NRCREP@nrc.gov](mailto:NRCREP@nrc.gov).
3. *Hand-deliver to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.
4. *Fax to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415-5144.

Requests for technical information about DG-3035 may be directed to Breeda Reilly at (301) 492-3110 or e-mail to [Breeda.Reilly@nrc.gov](mailto:Breeda.Reilly@nrc.gov).

Comments would be most helpful if received by November 13, 2008. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments

received on or before this date.

Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG-3035 are available through the NRC's public Web site under Draft Regulatory Guides in the "Regulatory Guides" collection of the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/doc-collections/>. Electronic copies are also available in ADAMS (<http://www.nrc.gov/reading-rm/adams.html>), under Accession No. ML081910233.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555-0001. The PDR can also be reached by telephone at (301) 415-4737 or (800) 397-4205, by fax at (301) 415-3548, and by e-mail to [PDR@nrc.gov](mailto:PDR@nrc.gov).

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 9th day of September 2008.

For the Nuclear Regulatory Commission.

**Stephen C. O'Connor,**  
*Acting Chief, Regulatory Guide Development  
 Branch, Division of Engineering, Office of  
 Nuclear Regulatory Research.*

[FR Doc. E8-21566 Filed 9-15-08; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52-025 and 52-026]

**Southern Nuclear Operating Company, et al.; Notice of Hearing and Opportunity To Petition for Leave To Intervene and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation on a Combined License for the Vogtle Electric Generating Plant Units 3 and 4**

Pursuant to the Atomic Energy Act of 1954, as amended, and the regulations in Title 10 of the Code of Federal Regulations (10 CFR) Part 2, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," and 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," notice is hereby given that a hearing will be held, at a

time and place to be set in the future by the U.S. Nuclear Regulatory Commission (NRC, the Commission) or designated by the Atomic Safety and Licensing Board (Board). The hearing will consider the combined license (COL) application dated March 28, 2008, filed pursuant to Subpart C of 10 CFR Part 52 by Southern Nuclear Operating Company (SNC), acting on behalf of itself and Georgia Power Company, Oglethorpe Power Corporation (an Electric Membership Corporation), Municipal Electric Authority of Georgia, and the City of Dalton, Georgia, an incorporated municipality in the State of Georgia acting by and through its Board of Water, Light and Sinking Fund Commissioners (Dalton Utilities). The application was accepted for docketing on May 30, 2008. The docket numbers established for this application are 52-025 and 52-026.

The application requests approval of a COL for Vogtle Electric Generating Plant (Vogtle) Units 3 and 4, located in Burke County, Georgia. The Vogtle COL application incorporates by reference the AP1000 design certified in Appendix D to 10 CFR Part 52, and the application to amend that certified design. The AP1000 amendment application is the subject of an ongoing rulemaking under docket number 52-006. The Vogtle COL application also references an Early Site Permit application that is the subject of an ongoing adjudicatory proceeding under docket number 52-011. The Final Environment Impact Statement for the ESP was published on August 22, 2008.

The hearing on the COL application will be conducted by a Board that will be designated by the Chairman of the Atomic Safety and Licensing Board Panel or will be conducted by the Commission. Notice as to the membership of the Board will be published in the *Federal Register* at a later date. The NRC staff will complete a detailed technical review of the application and will document its findings in a safety evaluation report. The Commission will refer a copy of the application to the Advisory Committee on Reactor Safeguards (ACRS) in accordance with 10 CFR 52.87, "Referral to the ACRS," and the ACRS will report on those portions of the application that concern safety.

Any person whose interest may be affected by this proceeding and who desires to participate as a party in this proceeding must file a written petition for leave to intervene in accordance with 10 CFR 2.309. Those permitted to intervene become parties to the proceeding, subject to any limitations in

the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

A petition for leave to intervene must be filed no later than 60 days from the date of publication of this notice in the *Federal Register*. Non-timely filings will not be entertained absent a determination by the Commission or presiding officer designated to rule on the petition, pursuant to the requirements of 10 CFR 2.309(c)(i)-(viii).

All documents filed in NRC adjudicatory proceedings including intervention petitions, request by interested governmental entities to participate under 10 CFR 2.315(c), and any other pleadings, must be filed in accordance with the NRC E-Filing rule, which was promulgated by the NRC on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the petitioner must contact the Office of the Secretary by e-mail at [HearingDocket@nrc.gov](mailto:HearingDocket@nrc.gov), or by calling (301) 415-1677, to request (1) a digital ID certificate, which allows the petitioner (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each participant will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a participant has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at

<http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or locally, (301) 415-4737.

Participants who believe that they have good cause for not submitting documents electronically must submit an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or

the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at [http://ehd.nrc.gov/EHD\\_Proceeding/home.asp](http://ehd.nrc.gov/EHD_Proceeding/home.asp), unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as Social Security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Any person who files a motion pursuant to 10 CFR 2.323 must consult with counsel for the applicant and counsel for the NRC staff who are listed below.

Counsel for the applicant are M. Stanford Blanton, [sblanton@balch.com](mailto:sblanton@balch.com) (205-226-3417), or Moanica M. Caston, [mcaston@southernco.com](mailto:mcaston@southernco.com) (205-992-5316), or Kathryn M. Sutton, [ksutton@morganlewis.com](mailto:ksutton@morganlewis.com) (202-739-5738). Counsel for the NRC staff in this proceeding are Ann Hodgdon, [Ann.Hodgdon@nrc.gov](mailto:Ann.Hodgdon@nrc.gov) (301-415-1587) and Michael Spencer, [Michael.Spencer@nrc.gov](mailto:Michael.Spencer@nrc.gov) (301-415-4073).

A person who is not a party may be permitted to make a limited appearance by making an oral or written statement of his position on the issues, which need not be submitted using the E-filing process, at any session of the hearing or any pre-hearing conference within the limits and conditions fixed by the presiding officer, but may not otherwise participate in the proceeding.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and will be accessible electronically through the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room link at the NRC Web site <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing

documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov). The application is also available at <http://www.nrc.gov/reactors/new-licensing/col/vogtle.html>. The ADAMS accession number for the application cover letter is ML081050133.

To search for documents in ADAMS using the Vogtle Units 3 and 4 COL application docket numbers, 52-025 and 52-026, enter the terms "05200025" and "05200026" in the "Docket Number" field when using either the Web-based search (advanced search) engine or the ADAMS find tool in Citrix. The Vogtle ESP can be found in ADAMS using the accession number ML070660266 or by going to <http://www.nrc.gov/reactors/new-licensing/esp/vogtle.html>. To search for documents on the Vogtle ESP docket, enter "05200011" in the "Docket Number" field in the Web-based search (advanced search) engine or the ADAMS find tool.

The AP1000 DCD through Revision 15, which is incorporated by reference into Appendix D of Part 52, can be found by going to <http://www.nrc.gov/reactors/new-licensing/design-cert/ap1000.html>. The AP1000 DCD Revision 16 can be found using ADAMS accession number ML071580939 or by going to <http://www.nrc.gov/reactors/new-licensing/col/vogtle.html>. To search for documents in ADAMS using the AP1000 DCD Revision 16 docket number 52-006, enter the term "05200006" in the ADAMS "Docket Number" field. The Final Environmental Impact Statement for the Vogtle ESP can be found on the NRC Web site at <http://www.nrc.gov/reactors/new-licensing/esp/vogtle.html>, or under ADAMS accession numbers ML0822440145, ML0822440165 and ML082260203.

#### **Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation**

1. This order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI)).

2. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party as defined in 10 CFR 2.4 who believes access to SUNSI or SGI is necessary for a response to the notice may request access to SUNSI or SGI. A

"potential party" is any person who intends or may intend to participate as a party by demonstrating standing and the filing of an admissible contention under 10 CFR 2.309. Requests submitted later than 10 days after the publication of the notice of hearing will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

3. The requester shall submit a letter requesting permission to access SUNSI and/or SGI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, *Attention: Rulemakings and Adjudications Staff*, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555-0001. The expedited delivery or courier mail address for both offices is U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are [HearingDocket@nrc.gov](mailto:HearingDocket@nrc.gov) and [OGCmail@nrc.gov](mailto:OGCmail@nrc.gov), respectively.<sup>1</sup> The request must include the following information:

a. A description of the licensing action with a citation to this **Federal Register** notice of hearing and opportunity to petition for leave to intervene;

b. The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in (a);

c. If the request is for SUNSI, the identity of the individual requesting access to SUNSI and the requester's need for the information in order to meaningfully participate in this adjudicatory proceeding, particularly why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention;

d. If the request is for SGI, the identity of the individual requesting access to SGI and the identity of any expert, consultant or assistant who will aid the requester in evaluating the SGI, and information that shows:

(i) Why the information is indispensable to meaningful participation in this licensing proceeding; and

<sup>1</sup> See footnote #6. While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

(ii) The technical competence (demonstrable knowledge, skill, experience, training or education) of the requester to understand and use (or evaluate) the requested information to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant or assistant who demonstrates technical competence as well as trustworthiness and reliability, and who agrees to sign a non-disclosure affidavit and be bound by the terms of a protective order; and

e. If the request is for SGI, Form SF-85, "Questionnaire for Non-Sensitive Positions," Form FD-258 (fingerprint card), and a credit check release form completed by the individual who seeks access to SGI and each individual who will aid the requester in evaluating the SGI. For security reasons, Form SF-85 can only be submitted electronically, through a restricted-access database. To obtain online access to the form, the requester should contact the NRC's Office of Administration at 301-415-0320.<sup>2</sup> The other completed forms must be signed in original ink, accompanied by a check or money order payable in the amount of [\$191.00] to the U.S. Nuclear Regulatory Commission for each individual, and mailed to the U.S. Nuclear Regulatory Commission, Office of Administration, Security Processing Unit, Mail Stop T-6E46, Washington, DC 20555-0012.

These forms will be used to initiate the background check, which includes fingerprinting as part of a criminal history records check.

**Note:** Copies of these forms do not need to be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as described above.

4. To avoid delays in processing requests for access to SGI, all forms should be reviewed for completeness and accuracy (including legibility) before submitting them to the NRC. Incomplete packages will be returned to the sender and will not be processed.

5. Based on an evaluation of the information submitted under items 2 and 3.a through 3.d, above, the NRC staff will determine within 10 days of receipt of the written access request whether (1) there is a reasonable basis to believe the petitioner is likely to establish standing to participate in this

NRC proceeding, and (2) there is a legitimate need for access to SUNSI or need to know the SGI requested. For SGI, the need to know determination is made based on whether the information requested is necessary (i.e., indispensable) for the proposed recipient to proffer and litigate a specific contention in this NRC proceeding<sup>3</sup> and whether the proposed recipient has the technical competence (demonstrable knowledge, skill, training, education, or experience) to evaluate and use the specific SGI requested in this proceeding.

6. If standing and need to know SGI are shown, the NRC staff will further determine based upon completion of the background check whether the proposed recipient is trustworthy and reliable. The NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection systems are sufficient to protect SGI from inadvertent release or disclosure. Recipients may opt to view SGI at the NRC's facility rather than establish their own SGI protection program to meet SGI protection requirements.

7. A request for access to SUNSI or SGI will be granted if:

a. The request has demonstrated that there is a reasonable basis to believe that a potential party is likely to establish standing to intervene or to otherwise participate as a party in this proceeding;

b. The proposed recipient of the information has demonstrated a need for SUNSI or a need to know for SGI, and that the proposed recipient of SGI is trustworthy and reliable;

c. The proposed recipient of the information has executed a Non-Disclosure Agreement or Affidavit and agrees to be bound by the terms of a Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI and/or SGI; and

d. The presiding officer has issued a protective order concerning the information or documents requested.<sup>4</sup> Any protective order issued shall provide that the petitioner must file SUNSI or SGI contentions 25 days after receipt of (or access to) that information. However, if more than 25 days remain

<sup>3</sup> Broad SGI requests under these procedures are thus highly unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requester's need to know than ordinarily would be applied in connection with an already-admitted contention.

<sup>4</sup> If a presiding officer has not yet been designated, the Chief Administrative Judge will issue such orders, or will appoint a presiding officer to do so.

between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

8. If the request for access to SUNSI or SGI is granted, the terms and conditions for access to sensitive unclassified information will be set forth in a draft protective order and affidavit of non-disclosure appended to a joint motion by the NRC staff, any other affected parties to this proceeding,<sup>5</sup> and the petitioner(s). If the diligent efforts by the relevant parties or petitioner(s) fail to result in an agreement on the terms and conditions for a draft protective order or non-disclosure affidavit, the relevant parties to the proceeding or the petitioner(s) should notify the presiding officer within 5 days, describing the obstacles to the agreement.

9. If the request for access to SUNSI is denied by the NRC staff or a request for access to SGI is denied by NRC staff either after a determination on standing and need to know or, later, after a determination on trustworthiness and reliability, the NRC staff shall briefly state the reasons for the denial. Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information. The requester may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing or need to know for SGI by filing a challenge within 5 days of receipt of that determination with (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer. In the same manner, an SGI requester may challenge an adverse determination on trustworthiness and reliability by filing a challenge within 15 days of receipt of that determination.

In the same manner, a party other than the requester may challenge an

<sup>5</sup> Parties/persons other than the requester and the NRC staff will be notified by the NRC staff of a favorable access determination (and may participate in the development of such a motion and protective order) if it concerns SUNSI and if the party/person's interest independent of the proceeding would be harmed by the release of the information (e.g., as with proprietary information).

<sup>2</sup> The requester will be asked to provide his or her full name, Social Security number, date and place of birth, telephone number, and e-mail address. After providing this information, the requester usually should be able to obtain access to the online form within one business day.



NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of such a request.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether

granting or denying access) is governed by 10 CFR 2.311.<sup>6</sup>

10. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI and/or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule

for processing and resolving requests under these procedures.

Dated at Rockville, Maryland, this 10th day of September 2008.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,  
*Secretary of the Commission.*

**Attachment 1—General Target  
Schedule for Processing and Resolving  
Requests for Access to Sensitive  
Unclassified Non-Safeguards  
Information and Safeguards  
Information in This Proceeding**

Day	Event/activity
0 .....	Publication of <b>Federal Register</b> notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10 .....	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and/or Safeguards Information (SGI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (e.g., showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
60 .....	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20 .....	Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25 .....	If NRC staff finds no "need," "need to know," or likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30 .....	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40 .....	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
190 .....	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information.
205 .....	Deadline for petitioner to seek reversal of a final adverse NRC staff determination either before the presiding officer or another designated officer.
A .....	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3 .....	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
A + 28 .....	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53 .....	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60 .....	(Answer receipt +7) Petitioner/Intervenor reply to answers.
B .....	Decision on contention admission.

<sup>6</sup> As of October 15, 2007, the NRC's final "E-Filing Rule" became effective. See Use of Electronic Submissions in Agency Hearings (72 FR 49139; August 28, 2007). Requesters should note that the

filing requirements of that rule apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI

requests submitted to the NRC staff under these procedures.

[FR Doc. E8-21565 Filed 9-15-08; 8:45 am]  
BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Notice of Issuance of Regulatory Guide

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Issuance and Availability of Regulatory Guide 10.8, Revision 3.

**FOR FURTHER INFORMATION CONTACT:** Mark Orr, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6373 or e-mail to [Mark.Orr@nrc.gov](mailto:Mark.Orr@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to an existing guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 3 of Regulatory Guide 10.8, "Guide for the Preparation of Applications for Medical Use Programs," was previously issued with a temporary identification as Draft Regulatory Guide, DG-0018 and an opportunity for public comments. This regulatory guide directs the reader to the type of information acceptable to the NRC staff for review of an application for a medical use license. Title 10, Part 35, "Medical Use of Byproduct Material," of the Code of Federal Regulations (10 CFR Part 35) regulates the medical use of byproduct material. In addition to the requirements of 10 CFR Part 35, medical use licensees may be subject to those portions of 10 CFR Part 20, "Standards for Protection Against Radiation," that relate to radiation safety and the sections of 10 CFR Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material," that relate to licensing and the noncommercial transfer of specific radioactive drugs to medical use licensees within a consortium.

This regulatory guide endorses the methods and procedures for medical licensing applications contained in the current revision of NUREG-1556, Volume 9, "Consolidated Guidance about Material Licenses: Program-Specific Guidance about Medical Use Licenses," as a process that the NRC staff finds acceptable for meeting the regulatory requirements.

##### II. Further Information

In April 2008, DG-0018 was published with a public comment period of 60 days from the issuance of the guide. No comments were received and the public comment period closed on June 30, 2008. Electronic copies of Regulatory Guide 10.8, Revision 3 are available through the NRC's public Web site under "Regulatory Guides" at <http://www.nrc.gov/reading-rm/doc-collections/>.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at Room O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852-2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555-0001. The PDR can also be reached by telephone at (301) 415-4737 or (800) 397-4209, by fax at (301) 415-3548, and by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 10th day of September 2008.

For the Nuclear Regulatory Commission,  
**Stephen C. O'Connor,**  
*Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.*  
[FR Doc. E8-21564 Filed 9-15-08; 8:45 am]  
BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

Docket No. 50-243

### Oregon State University Research Reactor; Notice of Issuance of Renewed Facility License No. R-106

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued renewed Facility License No. R-106, held by Oregon State University (the licensee), which authorizes continued operation of the Oregon State University TRIGA reactor (OSTR), located in Corvallis, Benton County, Oregon. The OSTR is a pool-type, light-water-moderated-and-cooled research reactor licensed to operate at a steady-

state thermal power level of 1.1 megawatts. Renewed Facility License No. R-106 will expire at midnight 20 years from its date of issuance.

The renewed license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in Title 10, Chapter 1, "Nuclear Regulatory Commission," of the Code of Federal Regulations (CFR), and sets forth those findings in the renewed license. The agency afforded an opportunity for hearing in the Notice of Opportunity for Hearing published in the *Federal Register* on June 14, 2007, at 72 FR 32922. The NRC received no request for a hearing or petition for leave to intervene following this notice.

The NRC staff prepared a safety evaluation report for the renewal of Facility License No. R-106 and concluded, based on that evaluation, that the licensee can continue to operate the facility without endangering the health and safety of the public. The NRC staff also prepared an environmental assessment for license renewal, noticed in the *Federal Register* on September 8, 2008, at 73 FR 52072, and concluded, based on that assessment, that renewal of the license will not have a significant impact on the quality of the human environment.

The NRC maintains the Agencywide Documents Access and Management System (ADAMS), which provides text and image files of the NRC's public documents. For details with respect to the application for renewal, see the licensee's letter dated October 5, 2004 (ADAMS Accession Nos. ML043270077 and ML07430452), as supplemented by letters dated August 8, 2005 (ADAMS Accession No. ML052290051), May 24, 2006 (ADAMS Accession No. ML061510355), November 10, 2006 (ADAMS Accession No. ML063210182), November 21, 2006 (ADAMS Accession No. ML063320500), July 10, 2007 (ADAMS Accession Nos. ML072150361 and ML072150362), July 27, 2007 (ADAMS Accession No. ML072150363), July 31, 2007 (ADAMS Accession No. ML072190043), August 6, 2007 (ADAMS Accession No. ML072340580), April 14, 2008 (ADAMS Accession No. ML081150194), August 6, 2008 (ML082261409), and August 11, 2008 (ML082270383). The dates and associated ADAMS accession numbers of NRC requests for additional information are May 15, 2006 (ADAMS Accession No. ML061310209), October 3, 2006 (ADAMS Accession No. ML062060026), May 21, 2007 (ADAMS

**AP1000 Design Certification Amendment – Proposed Rule  
76 Fed. Reg. 10269-01**



## National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with allowing the importation of ovine meat from Uruguay into the United States, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the Internet on the Regulations.gov Web site and is available for public inspection in our reading room. (Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

### List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are proposing to amend 9 CFR Part 94 as follows:

## PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, SWINE VESICULAR DISEASE, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

**Authority:** 7 U.S.C. 450, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. Section 94.1 is amended by revising paragraph (b)(4) and the introductory text of paragraph (d) to read as follows:

### § 94.1 Regions where rinderpest or foot-and-mouth disease exists; importations prohibited.

\* \* \* \* \*

(b) \* \* \*

(4) Except as provided in § 94.22 for fresh (chilled or frozen) beef and ovine meat from Uruguay.

\* \* \* \* \*

(d) Except as otherwise provided in this part, fresh (chilled or frozen) meat of ruminants or swine raised and slaughtered in a region free of foot-and-mouth disease and rinderpest, as designated in paragraph (a)(2) of this section, and fresh (chilled or frozen) beef and ovine meat exported from Uruguay in accordance with § 94.22, which during shipment to the United States enters a port or otherwise transits a region where rinderpest or foot-and-mouth disease exists, may be imported provided that all of the following conditions are met:

\* \* \* \* \*

3. Section 94.22 is revised to read as follows:

### § 94.22 Restrictions on importation of beef and ovine meat from Uruguay.

Notwithstanding any other provisions of this part, fresh (chilled or frozen) beef and ovine meat from Uruguay may be exported to the United States under the following conditions:

(a) The meat is beef and ovine meat from animals that have been born, raised, and slaughtered in Uruguay.

(b) If foot-and-mouth disease is detected anywhere in Uruguay, the export of beef and ovine meat from all of Uruguay to the United States is prohibited until at least 12 months have elapsed since the depopulation, cleaning, and disinfection of the last infected premises.

(c) The meat comes from bovines and sheep that originate from premises where foot-and-mouth disease has not been present during the lifetime of any bovines and sheep slaughtered for the export of beef and ovine meat to the United States.

(d) The meat comes from bovines and sheep that were moved directly from the premises of origin to the slaughtering establishment without any contact with other animals.

(e) The meat comes from bovines and sheep that received ante-mortem and post-mortem veterinary inspections, paying particular attention to the head and feet, at the slaughtering establishment, with no evidence found of vesicular disease.

(f) The meat consists only of bovine parts and ovine parts that are, by standard practice, part of the animal's carcass that is placed in a chiller for maturation after slaughter. The bovine and ovine parts that may not be imported include all parts of the head, feet, hump, hooves, and internal organs.

(g) All bone and visually identifiable blood clots and lymphoid tissue have been removed from the meat.

(h) The meat has not been in contact with meat from regions other than those listed in § 94.1(a)(2).

(i) The meat comes from carcasses that were allowed to mature at 40 to 50 °F (4 to 10 °C) for a minimum of 36 hours after slaughter and that reached a pH of 5.8 or less in the loin muscle at the end of the maturation period. Measurements for pH must be taken at the middle of both *longissimus dorsi* muscles. Any carcass in which the pH does not reach 5.8 or less may be allowed to mature an additional 24 hours and be retested, and, if the carcass still has not reached a pH of 5.8 or less after 60 hours, the meat from the carcass may not be exported to the United States.

(j) An authorized veterinary official of the Government of Uruguay certifies on the foreign meat inspection certificate that the above conditions have been met.

(k) The establishment in which the bovines and sheep are slaughtered allows periodic on-site evaluation and subsequent inspection of its facilities, records, and operations by an APHIS representative.

Done in Washington, DC, this 18th day of February 2011.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2011–4138 Filed 2–23–11; 8:45 am]

**BILLING CODE 3410–34–P**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 52

[NRC–2010–0131]

RIN 3150–AI81

### AP1000 Design Certification Amendment

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC or Commission) proposes to amend its regulations to certify an amendment to the AP1000 standard plant design. The purpose of the amendment is to replace the combined license (COL) information items and design acceptance criteria (DAC) with specific design information, address the effects of the impact of a large commercial aircraft, incorporate design improvements, and increase standardization of the design. Upon NRC rulemaking approval of its amendment to the AP1000 design, an

applicant seeking an NRC license to construct and operate a nuclear power reactor using the AP1000 design need not demonstrate in its application the safety of the certified design. The applicant for this amendment to the AP1000 certified design is Westinghouse Electric Company, LLC (Westinghouse). The public is invited to submit comments on this proposed design certification rule (DCR), the revised generic design control document (DCD) that would be incorporated by reference into the DCR, and the environmental assessment (EA) for this amendment to the AP1000 design.

**DATES:** Submit comments on the DCR, the revised DCD and/or the EA for this amendment by May 10, 2011. Submit comments specific to the information collections aspects of this rule by March 28, 2011. Comments received after the above dates will be considered if it is practical to do so, but assurance of consideration of comments received after these dates cannot be given.

**ADDRESSES:** Please include Docket ID NRC-2010-0131 in the subject line of your comments. For instructions on submitting comments and accessing documents related to this action, see Section I, "Submitting Comments and Accessing Information" in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods.

**Federal rulemaking Web site:** Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2010-0131. Address questions about NRC dockets to Carol Gallagher, telephone: 301-492-3668; e-mail: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

**Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

**E-mail comments to:** [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301-415-1677.

**Hand deliver comments to:** 11555 Rockville Pike, Rockville, Maryland 20852 between 7:30 a.m. and 4:15 p.m. during Federal workdays (telephone: 301-415-1677).

**Fax comments to:** Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

**FOR FURTHER INFORMATION CONTACT:** Serita Sanders, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2956; e-mail: [serita.sanders@nrc.gov](mailto:serita.sanders@nrc.gov).

#### **SUPPLEMENTARY INFORMATION:**

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#### **I. Submitting Comments and Accessing Information**

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, <http://www.regulations.gov>. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and, therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

**NRC's Public Document Room (PDR):** The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**NRC's Agencywide Documents Access and Management System (ADAMS):** Publicly available documents created or received at the NRC are available

electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov).

**Federal Rulemaking Web Site:** Public comments and supporting materials related to this proposed rule can be found at <http://www.regulations.gov> by searching on Docket ID NRC-2010-0131.

Documents that are not publicly available because they are considered to be either SUNSI (including SUNSI constituting proprietary information (PI)) or SGI may be available to interested persons who may wish to comment on the proposed design certification amendment. Interested persons shall follow the procedures described in the Supplementary Information section of this document, Section VII, "Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Preparation of Comments on the Proposed Amendment to the AP1000 Design Certification."

#### **II. Background**

Title 10 of the Code of Federal Regulations (10 CFR), part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," subpart B, presents the process for obtaining standard design certifications. Section 52.63, "Finality of standard design certifications," provides criteria for determining when the Commission may amend the certification information for a previously certified standard design in response to a request for amendment from any person.

During its initial certification of the AP1000 design, the NRC issued a final safety evaluation report (FSER) for the AP1000 as NUREG-1793, "Final Safety Evaluation Report Related to Certification of the AP1000 Standard Design," in September 2004. From March 2006 through May 2007, NuStart Energy Development, LLC (NuStart)<sup>1</sup> and Westinghouse provided the NRC with a number of technical reports (TRs) for pre-application review in an effort to: (1) Close specific, generically

<sup>1</sup> The NuStart member companies are: Constellation Generation Group, LLC, Duke Energy Corporation, EDF-International North America, Inc., Entergy Nuclear, Inc., Exelon Generation Company, LLC, Florida Power and Light Company, Progress Energy, and Southern Company Services, Inc.

applicable COL information items (information to be supplied by COL applicants/holders) in the AP1000 certified standard design; (2) identify standard design changes resulting from the AP1000 detailed design efforts; and (3) provide specific standard design information in areas or for topics where the AP1000 DCD was focused on the design process and acceptance criteria. TRs typically addressed a topical area (e.g., redesign of a component, structure or process) and included the technical details of a proposed change, design standards, analyses and justifications as needed, proposed changes to the DCD, and Westinghouse's assessment of the applicable regulatory criteria (e.g. the assessment of the criteria in 10 CFR part 52, Appendix D, Section VIII, "Processes for Changes and Departures"). The NRC identified issues associated with the TRs and engaged Westinghouse in requests for additional information and meetings during the pre-application phase to resolve them.

On May 26, 2007, Westinghouse submitted Revision 16 (ADAMS Accession No. ML071580939) of its application via transmittal letter (ADAMS Accession No. ML071580757) to amend the AP1000 design certification. This application was supplemented by letters dated October 26, November 2, and December 12, 2007, and January 11 and January 14, 2008. The application noted, in part:

(1) Generic amendments to the design certification, including additional design information to resolve DAC and design-related COL information items, as well as design information to make corrections and changes, would result in further standardization and improved licensing efficiency for the multiple COL applications referencing the AP1000 DCR that were planned for submittal in late 2007 and early 2008.

(2) Westinghouse, in conjunction with NuStart, has been preparing TRs since late 2005. These TRs were developed with input, review, comment, and other technical oversight provided by NuStart members, including the prospective AP1000 COL applicants. Submittal of these TRs to the NRC was initiated in March 2006. The TRs contain discussion of the technical changes and supplemental information that is used to support the detailed information contained in the DCD.

In Attachment 2 to the May 26, 2007, application, Westinghouse identified the criteria of 10 CFR 52.63(a)(1) that apply to the changes described in each TR and associated COL information items, if applicable.

On January 18, 2008, the NRC notified Westinghouse that it accepted the May 26, 2007, application, as supplemented, for docketing (Docket No. 52-006) and

published a notice of acceptance (ADAMS Accession No. ML073600743) in the **Federal Register** (73 FR 4926, January 28, 2008). On September 22, 2008, Westinghouse submitted Revision 17 to the AP1000 DCD. Revision 17 contains changes to the DCD that have been previously accepted by the NRC in the course of its review of Revision 16 of the DCD. In addition, Revision 17 proposes changes to DAC in the areas of piping design (Chapter 3), instrumentation and control (I&C) systems (Chapter 7) and human factors engineering (HFE) (Chapter 18). Revision 17 also includes a number of design changes not previously discussed with the NRC.

The NRC issued guidance on the finalization of design changes in Interim Staff Guidance (ISG) DC/COL-ISC-011, "Finalizing Licensing-basis Information," (ADAMS Accession No. ML092890623), which describes various categories of design changes that should not be deferred and those that should be included in the DCR.

By letter dated January 20, 2010, Westinghouse submitted a list of design change packages that would be included in Revision 18 of the AP1000 DCD (ADAMS Accession No. ML100250888). A number of subsequent submittals were made by Westinghouse to narrow the focus to those design changes to the categories of changes that should not be deferred, as recommended by DC/COL-ISC-011.

Revision 18 to the AP1000 DCD (ADAMS Accession No. ML103480572) was submitted on December 1, 2010, and contains both proposed changes previously described in the design change packages and changes already accepted by the NRC in the review process of Revision 17 to the AP1000 DCD. In the course of the review of both design change packages, the NRC determined that DCD changes were needed. In response to NRC questions, Westinghouse proposed such changes. Once the NRC was satisfied with these DCD markups, they were documented in the safety evaluation report (SER) as confirmatory items (CIs). The CIs were first identified during the NRC's review of Revision 17 of the AP1000 DCD. With the review of Revision 18, the NRC will confirm that Westinghouse has made those changes to the DCD accepted by the NRC that were not addressed in Revision 17 to the AP1000 DCD. The use of CIs is restricted to cases where the NRC has reviewed and approved specific design control document proposals. For the final rule, the NRC will complete the review of the CIs and prepare a FSER reflecting that action. The CIs are closed based upon an

acceptable comparison between the revised DCD text and the text required by the CI. No technical review of Revision 18 by the NRC is necessary, because only CIs and design changes pursuant to DC/COL-ISC-011 previously accepted by the NRC are contained in Revision 18 to the DCD.

In order to simplify the NRC's review of the design change documentation, and to simplify subsequent review by the NRC's Advisory Committee on Reactor Safeguards (ACRS), the design changes pursuant to DC/COL-ISC-011 are reviewed in a separate chapter (Chapter 23) of the FSER. This chapter indicates which areas of the DCD are affected by each design change and the letters from Westinghouse that submitted them. In some cases, NRC's review of the design changes reviewed in Chapter 23 may be incorporated into the chapters of the FSER where this material would normally be addressed because of the relationship between individual design changes and the review of prior DCD changes from Revisions 16 and 17 of the DCD.

The Westinghouse Revision 18 letter includes an enclosure providing a cross-reference to the DCD changes and the applicable 10 CFR 52.63(a)(1) criteria. Revision 17 provides a similar cross-reference in the September 22, 2008, Westinghouse letter for those changes associated with the revised DCD. Revision 16 on the other hand, uses TRs to identify the DCD changes and lists the corresponding applicable 10 CFR 52.63(a)(1) criteria via Westinghouse memorandum, dated May 26, 2007 (Table 1).

As of the date of this document, the application for amendment of the AP1000 design certification has been referenced in the following COL applications:

Vogtle, Units 3 and 4, Docket No. 05200025/6, 73 FR 33118;  
Bellefonte Nuclear Station, Units 3 and 4, Docket Nos. 05200014/5, 73 FR 4923;  
Levy County, Units 1 and 2, Docket Nos. 05200029/30, 73 FR 60726;  
Shearon Harris, Units 2 and 3, Docket Nos. 05200022/3, 73 FR 21995;  
Turkey Point, Units 6 and 7, Docket Nos. 05200040/1, 74 FR 51621;  
Virgil C. Summer, Units 2 and 3, Docket Nos. 05200027/8, 73 FR 45793;  
William States Lee III, Units 1 and 2, Docket Nos. 05200018/9, 73 FR 11156.

### III. Discussion

#### *A. Technical Evaluation of Westinghouse Amendment to the AP1000 Design*

Westinghouse's request to amend the AP1000 design contained several classes

of changes. Each class is discussed below:

#### Editorial Changes

Westinghouse requested changes to the AP1000 DCD to correct spelling, punctuation, grammar, designations, and references. None of these changes is intended to make any substantive changes to the certified design, and NUREG-1793, "Final Safety Evaluation Report Related to Certification of the AP1000 Standard Design," Supplement 2 (SER) does not address these changes.

#### Changes To Address Consistency and Uniformity

Westinghouse requested changes to the AP1000 DCD to achieve consistency and uniformity in the description of the certified design throughout the DCD. For example, a change to the type of reactor coolant pump (RCP) motor is evaluated in Chapter 5 of the SER on the application for the AP1000 amendment; Westinghouse requested that wherever this RCP motor is described in the DCD, the new description of the changed motor be used. The NRC reviewed the proposed change (to be used consistently throughout the DCD) to ensure that the proposed changes needed for uniformity and consistency are technically acceptable and do not adversely affect the previously approved design description. The NRC's bases for approval of these changes are set forth in the SER for the AP1000 amendment.

#### Substantive Technical Changes to the AP1000 Design (Other Than Those Needed for Compliance With the AIA Rule)

Among the many technical changes that are proposed by Westinghouse for inclusion in Revision 18 of the AP1000 DCD, the NRC selected 15 substantive changes for specific discussion in this proposed rule document, based on their safety significance:

- Removal of Human Factors Engineering (HFE) Design Acceptance Criteria (DAC) from the DCD
- Change to Instrumentation and Control (I&C) DAC and Inspection, Test, Analysis, and Acceptance Criteria (ITAAC)
- Minimization of Contamination
- Extension of Seismic Spectra to Soil Sites and Changes to Stability and Uniformity of Subsurface Materials and Foundations
- Long-Term Cooling
- Control Room Emergency Habitability System
- Changes to the Component Cooling Water System (CCWS)
- Changes to I&C Systems
- Changes to the Passive Core Cooling System (PCCS)—Gas Intrusion

- Integrated Head Package (IHP)—Use of the QuickLoc Mechanism
- Reactor Coolant Pump Design
- Reactor Pressure Vessel (RPV) Support System

• Spent Fuel Pool (SFP) Decay Heat Analysis and Associated Design Changes

- Spent Fuel Rack Design and Criticality Analysis
- Vacuum Relief System

The NRC evaluated each of the proposed changes and concluded that they are acceptable. The NRC's bases for approval of these changes are set forth in the SER for the AP1000 amendment. Further information about how each of these changes is provided in Section XIV, "Backfitting," of this document.

#### Changes To Address Compliance With the AIA Rule

Westinghouse requested changes to the AP1000 design in order to comply with the requirements of the AIA rule, 10 CFR 50.150. The NRC confirmed that Westinghouse has adequately described key AIA design features and functional capabilities in accordance with the AIA rule and conducted an assessment reasonably formulated to identify design features and functional capabilities to show, with reduced use of operator action, that the facility can withstand the effects of an aircraft impact. In addition, the NRC determined that there will be no adverse impacts from complying with the requirements for consideration of aircraft impacts on conclusions reached by the NRC in its review of the original U.S. AP1000 design certification. The NRC's bases for approval of these changes are set forth in the SER for the AP1000 amendment. As a result of these changes, the AP1000 design will achieve the Commission's objectives of enhanced public health and safety and enhanced common defense and security through improvement of the facility's inherent robustness to the impact of a large commercial aircraft at the design stage.

#### B. Changes to Appendix D

##### 1. Scope and Contents (Section III)

The purpose of Section III is to describe and define the scope and contents of this design certification and to present how documentation discrepancies or inconsistencies are to be resolved. Paragraph A is the required statement of the Office of the Federal Register (OFR) for approval of the incorporation by reference of Tier 1, Tier 2, and the generic technical specifications (TSs) into this appendix. The NRC is proposing to update the revision number of the DCD that would

be incorporated by reference to the revision Westinghouse provided to the NRC in its application for amendment to this DCR.

The legal effect of incorporation by reference is that the incorporated material has the same legal status as if it were published in the Code of Federal Regulations. This material, like any other properly issued regulation, has the force and effect of law. The AP1000 DCD was prepared to meet the technical information contents of application requirements for design certifications under 10 CFR 52.47(a) and the requirements of the OFR for incorporation by reference under 10 CFR part 51. One requirement of the OFR for incorporation by reference is that the applicant for the design certification (or amendment to the design certification) makes the generic DCD available upon request after the final rule becomes effective. Therefore, paragraph A would identify a Westinghouse representative to be contacted to obtain a copy of the AP1000 DCD. The NRC is proposing to update the Westinghouse representative's contact information in this DCR.

The AP1000 DCD is electronically accessible under ADAMS Accession No. ML103480572, at the OFR, and at <http://www.regulations.gov> by searching under Docket ID NRC-2010-0131. Copies of the generic DCD would also be available at the NRC's PDR. Questions concerning the accuracy of information in an application that references this appendix will be resolved by checking the master copy of the generic DCD in ADAMS. If the design certification amendment applicant makes a generic change (through NRC rulemaking) to the DCD under 10 CFR 52.63 and the change process provided in Section VIII, then at the completion of the rulemaking the NRC would request approval of the Director, OFR, for the revised master DCD. The NRC would require that the design certification amendment applicant maintain an up-to-date copy of the master DCD under paragraph A.1 in Section X and that it include any generic changes made.

The NRC is also proposing a change to paragraph D. Paragraph D establishes the generic DCD as the controlling document in the event of an inconsistency between the DCD and the design certification application or the FSER for the certified standard design. The proposed revision would renumber paragraph D as paragraph D.1, clarify this requirement as applying to the initial design certification, and add a similar paragraph D.2 to indicate that this is also the case for an inconsistency



between the generic DCD and the amendment application and the NRC's associated FSER for the amendment.

## 2. Additional Requirements and Restrictions (Section IV)

Section IV presents additional requirements and restrictions imposed upon an applicant who references Appendix D to 10 CFR part 52. Paragraph A presents the information requirements for these applicants. Paragraph A.3 currently requires the applicant to include, not simply reference, the PI and SGI referenced in the AP1000 DCD, or its equivalent, to ensure that the applicant has actual notice of these requirements. The NRC is proposing to revise paragraph A.3 to indicate that a COL applicant must include, in the plant-specific DCD, the SUNSI (including PI) and SGI referenced in the AP1000 DCD. This revision would address a wider class of information (SUNSI) to be included in the plant-specific DCD, rather than limiting the required information to PI. The requirement to include SGI in the plant-specific DCD would not change.

The NRC is also proposing to add a new paragraph A.4 to indicate requirements that must be met in cases where the COL applicant is not using the entity that was the original applicant for the design certification (or amendment) to supply the design for the applicant's use. Proposed paragraph A.4 would require that a COL applicant referencing Appendix D to 10 CFR part 52 include, as part of its application, a demonstration that an entity other than Westinghouse is qualified to supply the AP1000 certified design unless Westinghouse supplies the design for the applicant's use. In cases where a COL applicant is not using Westinghouse to supply the AP1000 certified design, this information is necessary to support any NRC finding under 10 CFR 52.73(a) that the entity is qualified to supply the certified design.

## 3. Applicable Regulations (Section V)

The purpose of Section V is to specify the regulations applicable and in effect when the design certification is approved (i.e., as of the date specified in paragraph A, which will be the date that the proposed revisions to Appendix D are approved by the Commission and the final rule is signed by the Secretary of the Commission). The NRC is proposing to redesignate paragraph A as paragraph A.1 to indicate that this paragraph applies to that portion of the design that was certified under the initial design certification. The NRC is further proposing to add new paragraph A.2, similar to that of paragraph A.1, to

indicate the regulations that would apply to that portion of the design within the scope of this amendment, as would be approved by the Commission and signed by the Secretary of the Commission.

## 4. Issue Resolution (Section VI)

The purpose of Section VI is to identify the scope of issues that were resolved by the Commission in the original certification rulemaking, and, therefore, are "matters resolved" within the meaning and intent of 10 CFR 52.63(a)(5). Paragraph B presents the scope of issues that may not be challenged as a matter of right in subsequent proceedings and describes the categories of information for which there is issue resolution. Paragraph B.1 provides that all nuclear safety issues arising from the Atomic Energy Act of 1954 (the Act), as amended, that are associated with the information in the NRC's final safety evaluation report related to certification of the AP1000 standard design (ADAMS Accession No. ML103260072) and the Tier 1 and Tier 2 information and the rulemaking record for Appendix D to 10 CFR part 52, are resolved within the meaning of 10 CFR 52.63(a)(5). These issues include the information referenced in the DCD that are requirements (i.e., "secondary references"), as well as all issues arising from PI and SGI, which are intended to be requirements. Paragraph B.2 provides for issue preclusion of PI and SGI.

The NRC is proposing to revise paragraph B.1 to extend issue resolution to the information contained in the NRC's FSER (Supplement No. 2) and the rulemaking record for this amendment. In addition, the NRC is proposing to revise paragraph B.2 to extend issue resolution to the broader category of SUNSI, including PI, referenced in the generic DCD.

The NRC is also proposing to revise paragraph B.7, which identifies as resolved all environmental issues concerning severe accident mitigation design alternatives (SAMDA) arising under the National Environmental Policy Act of 1969 (NEPA) associated with the information in the NRC's final EA for the AP1000 design and Appendix 1B of the generic DCD (Revision 15) for plants referencing Appendix D to 10 CFR part 52 whose site parameters are within those specified in the SAMDA evaluation. The NRC is proposing to revise this paragraph to identify as also resolved all environmental issues concerning SAMDA associated with the information in the NRC's final EA for this amendment and Appendix 1B of Revision 18 of the generic DCD for

plants referencing Appendix D to 10 CFR part 52 whose site parameters are within those specified in the SAMDA evaluation.

Finally, the NRC is proposing to revise paragraph E, which provides the procedure for an interested member of the public to obtain access to SUNSI (including PI) and SGI for the AP1000 design in order to request and participate in proceedings, as identified in paragraph B, involving licenses and applications that reference Appendix D to 10 CFR part 52. The NRC is proposing to replace the current information in this paragraph with a statement that the NRC will specify at an appropriate time the procedure for interested persons to review SGI or SUNSI (including PI) for the purpose of participating in the hearing required by 10 CFR 52.85, the hearing provided under 10 CFR 52.103, or in any other proceeding relating to Appendix D to 10 CFR part 52 in which interested persons have a right to request an adjudicatory hearing. The NRC expects to follow its current practice of establishing the procedures by order when the notice of hearing is published in the **Federal Register**. (See, e.g., Florida Power and Light Co., Combined License Application for the Turkey Point Units 6 and 7, Notice of Hearing, Opportunity To Petition for Leave To Intervene and Associated Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation (75 FR 34777; June 18, 2010); Notice of Receipt of Application for License; Notice of Consideration of Issuance of License; Notice of Hearing and Commission Order and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation; In the Matter of AREVA Enrichment Services, LLC (Eagle Rock Enrichment Facility) (74 FR 38052; July 30, 2009).

In the four currently approved design certifications (10 CFR part 52, Appendices A through D), paragraph E presents specific directions on how to obtain access to PI and SGI on the design certification in connection with a license application proceeding referencing that DCR. The NRC is proposing this change because these provisions were developed before the terrorist events of September 11, 2001. After September 11, 2001, Congress changed the statutory requirements governing access to SGI, and the NRC revised its rules, procedures, and practices governing control and access to SUNSI and SGI. The NRC now believes that generic direction on

obtaining access to SUNSI and SGI is no longer appropriate for newly approved DCRs. Accordingly, the specific requirements governing access to SUNSI and SGI contained in paragraph E of the four currently approved DCRs should not be included in the DCR for the AP1000. Instead, the NRC should specify the procedures to be used for obtaining access at an appropriate time in the COL proceeding referencing the AP1000 DCR. The NRC intends to include the new rule language in any future amendments or renewals of the currently existing DCRs, as well as in new (i.e., initial) DCRs. However, the NRC is not planning to initiate rulemaking to change paragraph E of the existing DCRs, to minimize unnecessary resource expenditures by both the original DCR applicant and the NRC.

#### 5. Processes for Changes and Departures (Section VIII)

The purpose of Section VIII is to present the processes for generic changes to, or plant-specific departures (including exemptions) from, the DCD. The Commission adopted this restrictive change process to achieve a more stable licensing process for applicants and licensees that reference this DCR. The change processes for the three different categories of Tier 2 information, namely, Tier 2, Tier 2\*, and Tier 2\* with a time of expiration, are presented in paragraph B.

Departures from Tier 2 that a licensee may make without prior NRC approval are addressed under paragraph B.5 (similar to the process in 10 CFR 50.59). The NRC is proposing changes to Section VIII to address the change control process specific to departures from the information required by 10 CFR 52.47(a)(28) to address the NRC's AIA requirements in 10 CFR 50.150. Specifically, the NRC is proposing to revise paragraph B.5.b to indicate that the criteria in this paragraph for determining if a proposed departure from Tier 2 requires a license amendment do not apply to a proposed departure affecting information required by 10 CFR 52.47(a)(28) to address 10 CFR 50.150. In addition, the NRC is proposing to redesignate paragraphs B.5.d, B.5.e, and B.5.f as paragraphs B.5.e, B.5.f, and B.5.g, respectively, and to add a new paragraph B.5.d. Proposed paragraph B.5.d would require an applicant or licensee who proposed to depart from the information required by 10 CFR 52.47(a)(28) to be included in the final safety analysis report (FSAR) for the standard design certification to consider the effect of the changed feature or capability on the original assessment required by 10 CFR

50.150(a). The FSAR information required by the AIA rule which is subject to this change control requirement includes the descriptions of the design features and functional capabilities incorporated into the final design of the nuclear power facility and the description of how the identified design features and functional capabilities meet the assessment requirements in 10 CFR 50.150(a)(1). The objective of the change controls is to determine whether the design of the facility, as changed or modified, is shown to withstand the effects of the aircraft impact with reduced use of operator actions. In other words, the applicant or licensee must continue to show, with the modified design, that the acceptance criteria in 10 CFR 50.150(a)(1) are met with reduced use of operator actions. The AIA rule does not require an applicant or a licensee implementing a design change to redo the complete AIA to evaluate the effects of the change. The NRC believes it may be possible to demonstrate that a design change is bounded by the original design or that the change provides an equivalent level of protection, without redoing the original assessment.

Consistent with the NRC's intent when it issued the AIA rule, under the proposed revision to this section, plant-specific departures from the AIA information in the FSAR would not require a license amendment, but may be made by the licensee upon compliance with the substantive requirements of the AIA rule (i.e., the AIA rule acceptance criteria). The applicant or licensee would also be required to document, in the plant-specific departure, how the modified design features and functional capabilities continue to meet the assessment requirements in 10 CFR 50.150(a)(1), in accordance with Section X of Appendix D to 10 CFR part 52. Applicants and licensees making changes to design features or capabilities included in the certified design may also need to develop alternate means to cope with the loss of large areas of the plant from explosions or fires to comply with the requirements in 10 CFR 50.54(hh). The proposed addition of these provisions to Appendix D to 10 CFR part 52 is consistent with the NRC's intent when it issued the AIA rule in 2009, as noted in the statements of consideration for that rule (74 FR 28112; June 12, 2009, at page 28122, third column).

Paragraph B.6 of Appendix D to 10 CFR part 52 provides a process for departing from Tier 2\* information. The creation of, and restrictions on changing, Tier 2\* information resulted

from the development of the Tier 1 information for the ABWR design certification (Appendix A to 10 CFR part 52) and the ABB-CE [ASEA Brown Boveri—Combustion Engineering] System 80+ design certification (Appendix B to 10 CFR part 52). During this development process, these applicants requested that the amount of information in Tier 1 be minimized to provide additional flexibility for an applicant or licensee who references these appendices. Also, many codes, standards, and design processes that would not be specified in Tier 1, but were acceptable for meeting ITAAC, were specified in Tier 2. The result of these actions was that certain significant information only exists in Tier 2 and the Commission did not want this significant information to be changed without prior NRC approval. This Tier 2\* information was identified in the generic DCD with italicized text and brackets (See Table 1–1 of the AP1000 DCD Introduction for a list of the Tier 2\* items). Although the Tier 2\* designation was originally intended to last for the lifetime of the facility, like Tier 1 information, the NRC determined that some of the Tier 2\* information could expire when the plant first achieves full power (100 percent), after the finding required by 10 CFR 52.103(g), while other Tier 2\* information must remain in effect throughout the life of the facility. The factors determining whether Tier 2\* information could expire after the first full-power was achieved were whether the Tier 1 information would govern these areas after first full-power and the NRC's determination that prior approval was required before implementation of the change due to the significance of the information. Therefore, certain Tier 2\* information listed in paragraph B.6.c would cease to retain its Tier 2\* designation after full-power operation is first achieved following the Commission finding under 10 CFR 52.103(g). Thereafter, that information would be deemed to be Tier 2 information that would be subject to the departure requirements in paragraph B.5. By contrast, the Tier 2\* information identified in paragraph B.6.b would retain its Tier 2\* designation throughout the duration of the license, including any period of license renewal.

The NRC is proposing to revise certain items designated as Tier 2\*. The item on HFE would be moved from paragraph B.5.b to paragraph B.5.c, with the effect that the Tier 2\* designation on that information would expire after full-power operation is achieved rather than never expiring. In addition, a new item

would be added to paragraph B.5.b for RCP type. The NRC determined that certain specific characteristics of the RCP were significant to the safety review and that prior approval of changes affecting those characteristics would be required. This Tier 2\* designation does not expire.

Finally, the NRC also concluded that the Tier 2\* designation was not necessary for the specific Code edition and addenda for the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), as listed in item VIII.B.6.c.(2). At the time of the initial certification, the NRC determined that this information should be Tier 2\*. Subsequently, 10 CFR part 50 was modified to include provisions in 10 CFR 50.55a(b)(1)(iii) to provide restrictions in the use of certain editions/addenda to the ASME Code, Section III, that the NRC found unacceptable. In addition, 10 CFR 50.55a(c)(3), (d)(2) and (e)(2), for reactor coolant pressure boundary, Quality Group B Components, and Quality Group C Components, respectively, provide regulatory controls on the use of later edition/addenda to the ASME Code, Section III, through the conditions NRC established on use of paragraph NCA-1140 of the Code. As a result, these rule requirements adequately control the ability of a licensee to use a later edition of the ASME Code and addenda such that Tier 2\* designation is not necessary. Thus, the Tier 2\* item in paragraph B.6.c.(2) for ASME Code was modified to be limited to ASME Code piping design restrictions as identified in Section 5.2.1.1 of the AP1000 DCD and to include certain Code cases, including Code Case N-284-1, as discussed in Section 3.8.2.2 and other Code cases as designated in Table 5.2-3 of the DCD (Code Case N-284-1 is the only case currently specified in Appendix D to 10 CFR part 52). The NRC retained the Tier 2\* designation for applying ASME Code, Section III, Subsection NE to containment design, by moving this provision to the end of item VIII.B.6.c.(14). Section 3.8.2.2 of the DCD identifies the specific edition and addenda for containment design (2001 Edition of ASME Code, Section III, including 2002 Addenda) with the Tier 2\* markings.

#### 6. Records and Reporting (Section X)

The purpose of Section X is to present the requirements that apply to maintaining records of changes to and departures from the generic DCD, which would be reflected in the plant-specific DCD. Section X also presents the requirements for submitting reports

(including updates to the plant-specific DCD) to the NRC. Paragraph A.1 requires that a generic DCD and the PI and SGI referenced in the generic DCD be maintained by the applicant for this rule. The NRC is proposing to revise paragraph A.1 to replace the term "proprietary information," or PI, with the broader term "sensitive unclassified non-safeguards information," or SUNSI. Information categorized as SUNSI is information that is generally not publicly available and encompasses a wide variety of categories. These categories include information about a licensee's or applicant's physical protection or material control and accounting program for special nuclear material not otherwise designated as SGI or classified as National Security Information or Restricted Data (security-related information), which is required by 10 CFR 2.390 to be protected in the same manner as commercial or financial information (*i.e.*, they are exempt from public disclosure). This change is necessary because the NRC is proposing to approve PI and security-related information. This change would also ensure that Westinghouse (as well as any future applicants for amendments to the AP1000 DCR who intend to supply the certified design) are required to maintain a copy of the applicable generic DCD, and maintain the applicable SUNSI (including PI) and SGI—developed by that applicant—that were approved as part of the relevant design certification rulemakings.

The NRC notes that the generic DCD concept was developed, in part, to meet OFR requirements for incorporation by reference, including public availability of documents incorporated by reference. However, the PI and SGI were not included in the public version of the DCD. Only the public version of the generic DCD would be identified and incorporated by reference into this rule. Nonetheless, the SUNSI for this amendment was reviewed by the NRC and, as stated in paragraph B.2, the NRC would consider the information to be resolved within the meaning of 10 CFR 52.63(a)(5). Because this information is in the non-public version of the DCD, this SUNSI (including PI) and SGI, or its equivalent, is required to be provided by an applicant for a license referencing this DCR.

In addition, the NRC is proposing to add a new paragraph A.4.a that would require the applicant for the AP1000 design to maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) for the term of the certification (including any period of renewal). The NRC is also proposing a new paragraph A.4.b that

would require an applicant or licensee who references this appendix to maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) throughout the pendency of the application and for the term of the license (including any period of renewal). The addition of paragraphs A.4.a and A.4.b is consistent with the NRC's intent when it issued the AIA rule in 2009 (74 FR 28112; June 12, 2009, at page 28121, second column).

#### IV. Section-by-Section Analysis

The following discussion sets forth each proposed amendment to the AP1000 DCR. All section and paragraph references are to the provisions in the proposed amendment to Appendix D to 10 CFR part 52, unless otherwise noted.

##### A. Introduction (Section I)

The NRC is proposing to amend Section I, Introduction, to change the DCD revision number from 15 to 18.

##### B. Scope and Contents (Section III)

The NRC is proposing to amend Section III, Scope and Contents, to revise paragraph A to update the revision number of the DCD, from Revision 15 to Revision 18, approved for incorporation by reference; update the contact information of the Westinghouse representative to be contacted should a member of the public request a copy of the generic DCD; and update other locations (*e.g.*, the NRC's PDR) where a member of the public could request a copy of or otherwise view the generic DCD.

The NRC is proposing to revise paragraph D to set forth the way potential conflicts are to be resolved. Paragraph D would establish the generic DCD as the controlling document in the event of an inconsistency between the DCD and either the application or the FSER for the certified standard design. This clarification would further distinguish between the conflict scenarios presented in paragraphs D.1 (for the initial certification of the design) and D.2 (for Amendment 1 to the design).

##### C. Additional Requirements and Restrictions (Section IV)

The NRC is proposing to amend Section IV, Additional Requirements and Restrictions, to set forth additional requirements and restrictions imposed upon an applicant who references Appendix D to 10 CFR part 52. Paragraph A would set forth the information requirements for these applicants. The NRC is proposing to revise paragraph A.3 to replace the term "proprietary information" with the

broader term “sensitive unclassified non-safeguards information.”

The NRC is also proposing to add a new paragraph A.4 to indicate requirements that must be met in cases where the COL applicant is not using the entity that was the original applicant for the design certification (or amendment) to supply the design for the applicant's use. Proposed paragraph A.4 would require a COL applicant referencing Appendix D to 10 CFR part 52 to include, as part of its application, a demonstration that an entity other than Westinghouse is qualified to supply the AP1000 certified design, unless Westinghouse supplies the design for the applicant's use. In cases where a COL applicant is not using Westinghouse to supply the AP1000 certified design, the required information would be used to support any NRC finding under 10 CFR 52.73(a) that an entity other than the one originally sponsoring the design certification or design certification amendment is qualified to supply the certified design.

#### *D. Applicable Regulations (Section V)*

The NRC proposes to revise paragraph A to distinguish between the regulations that are applicable and in effect at the time the initial design certification was approved (paragraph A.1) and the regulations that would be applicable and in effect at the time that Amendment 1 is approved (paragraph A.2).

#### *E. Issue Resolution (Section VI)*

The NRC proposes to amend Section VI, Issue Resolution, by revising paragraph B.1 to provide that all nuclear safety issues arising from the Act that are associated with the information in the NRC's FSER (NUREG-1793), the Tier 1 and Tier 2 information (including the availability controls in Section 16.3 of the generic DCD), and the rulemaking record for Appendix D to 10 CFR part 52 are resolved within the meaning of 10 CFR 52.63(a)(5). These issues include the information referenced in the DCD that are requirements (i.e., secondary references), as well as all issues arising from SUNSI (including PI) and SGI, which are intended to be requirements. This paragraph would be revised to extend issue resolution beyond that of the previously certified design to also include the information in Supplement No. 2 of the FSER and the rulemaking record associated with Amendment 1 to the AP1000 design.

The NRC is proposing to revise paragraph B.2 to replace the term “proprietary information” with the

broader term “sensitive unclassified non-safeguards information.”

Paragraph B.7 would be revised to extend environmental issue resolution beyond that of the previously certified design to also include the information in Amendment 1 to the AP1000 design and Appendix 1B of Revision 18 of the generic DCD.

New paragraph VI.E would provide that the NRC will specify at an appropriate time the procedures for interested persons to obtain access to PI, SUNSI, and SGI for the AP1000 DCR. Access to such information would be for the sole purpose of requesting or participating in certain specified hearings, such as (1) The hearing required by 10 CFR 52.85 where the underlying application references Appendix D to 10 CFR part 52; (2) any hearing provided under 10 CFR 52.103 where the underlying COL references Appendix D to 10 CFR part 52; and (3) any other hearing relating to Appendix D to 10 CFR part 52 in which interested persons have the right to request an adjudicatory hearing.

#### *F. Processes for Changes and Departures (Section VIII)*

The NRC is proposing changes to Section VIII to address the change control process specific to departures from the information required by 10 CFR 52.47(a)(28) to address the NRC's AIA requirements in 10 CFR 50.150. Specifically, the NRC is proposing to revise the introductory text of paragraph B.5.b to indicate that the criteria in this paragraph for determining if a proposed departure from Tier 2 requires a license amendment do not apply to a proposed departure affecting information required by 10 CFR 52.47(a)(28) to address aircraft impacts.

In addition, the NRC is proposing to redesignate paragraphs B.5.d, B.5.e, and B.5.f as paragraphs B.5.e, B.5.f, and B.5.g, respectively, and to add a new paragraph B.5.d. Proposed paragraph B.5.d would require an applicant referencing the AP1000 DCR, who proposed to depart from the information required by 10 CFR 52.47(a)(28) to be included in the FSAR for the standard design certification, to consider the effect of the changed feature or capability on the original 10 CFR 50.150(a) assessment.

The NRC is proposing to revise certain items designated as Tier 2\*. The item on HFE would be moved from paragraph B.6.b to paragraph B.6.c, with the effect that the Tier 2\* designation on that information would expire after full-power operation is achieved rather than never. In addition, a new item would be added to paragraph B.6.b for RCP type.

The NRC determined that certain specific characteristics of the RCP were significant to the safety review and that prior approval of changes affecting those characteristics would be required. This Tier 2\* designation does not expire.

The NRC also concluded that the Tier 2\* designation was not necessary for the specific Code edition and addenda for the ASME code as listed in paragraph B.6.c(2). Thus, the item in paragraph B.6.c(2) for the ASME Code would be modified to be more limited in scope. The NRC would retain the Tier 2\* designation for the Code edition applicable to containment in paragraph B.6.c(14) and added paragraph B.6.c(16) on ASME Code cases, which are specified in Table 5.2–3 of the generic DCD.

#### *G. Records and Reporting (Section X)*

The NRC is proposing to amend Section X, Records and Reporting, to revise paragraph A.1 to replace the term “proprietary information” with the broader term “sensitive unclassified non-safeguards information.” Paragraph A.1 would also be revised to require the design certification amendment applicant to maintain the SUNSI, which it developed and used to support its design certification amendment application. This would ensure that the referencing applicant has direct access to this information from the design certification amendment applicant, if it has contracted with the applicant to provide the SUNSI to support its license application. The AP1000 generic DCD and the NRC-approved version of the SUNSI would be required to be maintained for the period that Appendix D to 10 CFR part 52 may be referenced.

The NRC is also proposing to add a new paragraph A.4.a, which would require Westinghouse to maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) for the term of the certification (including any period of renewal). This proposed provision, which is consistent with 10 CFR 50.150(c)(3), would facilitate any NRC inspections of the assessment that the NRC decides to conduct.

Similarly, the NRC is proposing new paragraph A.4.b, which would require an applicant or licensee who references Appendix D to 10 CFR part 52 to maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) throughout the pendency of the application and for the term of the license (including any period of renewal). This provision is consistent with 10 CFR 50.150(c)(4). For all applicants and licensees, the supporting

documentation retained onsite should describe the methodology used in performing the assessment, including the identification of potential design features and functional capabilities to show that the acceptance criteria in 10 CFR 50.150(a)(1) would be met.

#### V. Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement States Programs," approved by the Commission on June 20, 1997, and published in the **Federal Register**

(62 FR 46517; September 3, 1997), this rule is classified as compatibility "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Act or the provisions of this section. Although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements by a mechanism that is consistent with the particular

State's administrative procedure laws. Category "NRC" regulations do not confer regulatory authority on the State.

#### VI. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods, as indicated. To access documents related to this action, see Section I, "Submitting Comments and Accessing Information" of this notice.

Document	PDR	Web	ADAMS
SECY-11-0002, "Proposed Rule—AP1000 Design Certification Amendment" .....	X	X	ML103000397
AP1000 Design Control Document (DCD) Revision 18, Transmittal Letter .....	X	X	ML103480059
Westinghouse AP1000 DCD Revision 18 (public version) .....	X	.....	ML103480572
Advanced Final Safety Evaluation Report for Revision 18 to the AP1000 Standard Design Certification (publicly available) .....	X	.....	ML103260072
AP1000 Environmental Assessment .....	X	X	ML103000415
Interim Staff Guidance DC/COL-ISG-011, "Finalizing Licensing-basis Information" ....	X	X	ML092890623
Design Changes Submitted by Westinghouse, Revision 18 .....	X	X	ML100250873
AP1000 Technical Reports (Appendix) .....	X	.....	ML103350501
TR-26, "AP1000 Verification of Water Sources for Long-Term Recirculation Cooling Following a LOCA," Revision 8 .....	X	X	ML102170123
TR-54, "Spent Fuel Storage Racks Structure and Seismic Analysis," Revision 4 .....	X	X	ML101580475
TR-65, "Spent Fuel Storage Racks Criticality Analysis," Revision 2 .....	X	X	ML100082093
TR-103, "Fluid System Changes," Revision 2 .....	X	X	ML072830060
"Evaluation of the Effect of the AP1000 Enhanced Shield Building on the Containment Response and Safety Analysis," Revision 1 .....	X	X	ML102220579
AP1000 DCD Transmittal Letter, Revision 17 .....	X	X	ML083220482
AP1000 DCD, Revision 17 .....	X	X	ML083230868
AP1000 DCD Transmittal Letter, Revision 16 .....	X	X	ML071580757
AP1000 DCD, Revision 16 .....	X	X	ML071580939
NRC Notice of Acceptance, Revision 16 .....	X	X	ML073600743
December 13, 2010 ACRS Letter to Chairman (Report on FSER to AP1000 DCD) .....	X	X	ML103410351
December 20, 2010 ACRS Letter to Chairman (Long-Term Core Cooling) .....	X	X	ML103410348
Regulatory History of Design Certification <sup>2</sup> .....	X	.....	ML003761550

#### VII. Procedures for Access to Sensitive Unclassified Non-Safeguards Information (Including Proprietary Information) and Safeguards Information for Preparation of Comments on the Proposed Amendment to the AP1000 Design Certification

This section contains instructions regarding how interested persons who wish to comment on the proposed design certification may request access to documents containing SUNSI (including PI<sup>3</sup>), and SGI, to prepare their comments. Requirements for access to SGI are primarily set forth in 10 CFR parts 2 and 73. This document provides information specific to this proposed rulemaking; however, nothing in this document is intended to conflict with the SGI regulations.

Interested persons who desire access to SUNSI information on the AP1000

design constituting PI should first request access to that information from the design certification applicant. A request for access should be submitted to the NRC if the applicant does not either grant or deny access by the 10-day deadline described below.

##### *Submitting a Request to the NRC*

Within 10 days after publication of this document, an individual or entity (thereinafter, the "requester") may request access to such information. Requests for access to SUNSI or SGI submitted more than 10 days after publication of this document will not be considered absent a showing of good cause for the late filing explaining why the request could not have been filed earlier.

The requester shall submit a letter requesting permission to access SUNSI and/or SGI to the Office of the Secretary,

U.S. Nuclear Regulatory Commission, Attention: Rulemakings and Adjudications Staff, Washington DC 20555-0001. The expedited delivery or courier mail address is: Office of the Secretary, U.S. Nuclear Regulatory Commission, Attention: Rulemakings and Adjudications Staff, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary is [rulemaking.comments@nrc.gov](mailto:rulemaking.comments@nrc.gov). The requester must send a copy of the request to the design certification applicant at the same time as the original transmission to the NRC using the same method of transmission. Copies of the request to the applicant must be sent to Stanley E. Ritterbusch, Manager, AP1000 Design Certification, Westinghouse Electric Company, 1000 Westinghouse Drive, Cranberry

<sup>2</sup> The regulatory history of the NRC's design certification reviews is a package of documents that is available in NRC's PDR and ADAMS. This history spans the period during which the NRC simultaneously developed the regulatory standards

for reviewing these designs and the form and content of the rules that certified the designs.

<sup>3</sup> For purposes of this discussion, "proprietary information" constitutes trade secrets or commercial

or financial information that are privileged or confidential, as those terms are used under the Freedom of Information Act (5 U.S.C. 552) and the NRC's implementing regulation at 10 CFR part 9.

Township, PA 16066, or by e-mail to [ritterse@westinghouse.com](mailto:ritterse@westinghouse.com). For purposes of complying with this requirement, a "request" includes all the information required to be submitted to the NRC as presented in this section.

The request must include the following information:

1. The name of this design certification amendment (AP1000 Design Certification Amendment), the rulemaking identification number RIN 3150-AI81, the rulemaking Docket ID NRC-2010-0131, and a citation to this document at the top of the first page of the request;

2. The name, address, e-mail, or fax number of the requester. If the requester is an entity, the name of the individual(s) to whom access is to be provided, then the address and e-mail or fax number for each individual, and a statement of the authority granted by the entity to each individual to review the information and to prepare comments on behalf of the entity must be provided. If the requester is relying upon another individual to evaluate the requested SUNSI and/or SGI and prepare comments, then the name, affiliation, address, and e-mail or fax number for that individual must be provided.

3.(a) If the request is for SUNSI, then the requester's need for the information to prepare meaningful comments on the proposed design certification must be demonstrated. Each of the following areas must be addressed with specificity.

(i) The specific issue or subject matter on which the requester wishes to comment;

(ii) An explanation why information which is publicly available, including the publicly available versions of the application and DCD, and information on the NRC's docket for the design certification application is insufficient to provide the basis for developing meaningful comment on the proposed design certification with respect to the issue or subject matter described previously in paragraph 3.(a)(i); and

(iii) Information demonstrating that the individual to whom access is to be provided has the technical competence (demonstrable knowledge, skill, experience, education, training, or certification) to understand and use (or evaluate) the requested information for a meaningful comment on the proposed design certification with respect to the issue or subject matter described in paragraph 3.(a)(i) above.

(b) If the request is for SUNSI constituting PI, then a chronology and discussion of the requester's attempts to obtain the information from the design

certification applicant, and the final communication from the requester to the applicant and the applicant's response with respect to the request for access to PI must be submitted.

4.(a) If the request is for SGI, then the requester's "need to know" the SGI must be demonstrated as required by 10 CFR 73.2 and 10 CFR 73.22(b)(1). Consistent with the definition of "need to know" as stated in 10 CFR 73.2 and 10 CFR 73.22(b)(1), each of the following areas must be addressed with specificity:

(i) The specific issue or subject matter on which the requester wishes to comment;

(ii) An explanation why information which is publicly available, including the publicly available versions of the application and DCD, and information on the NRC's docket for the design certification application is insufficient to provide the basis for developing meaningful comment on the proposed design certification with respect to the issue or subject matter described in paragraph 4.(a)(i) above, and that the SGI requested is indispensable in order to develop meaningful comments;<sup>4</sup>

(iii) Information demonstrating that the individual to whom access is to be provided has the technical competence (demonstrable knowledge, skill, experience, education, training, or certification) to understand and use (or evaluate) the requested SGI, for meaningful comment on the proposed design certification with respect to the issue or subject matter described in paragraph 4.(a)(i) above.

(b) A completed Form SF-85, "Questionnaire for Non-Sensitive Positions," must be submitted for each individual who would have access to SGI. The completed Form SF-85 will be used by the Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR part 2, Subpart G, and 10 CFR 73.22(b)(2), to determine the requester's trustworthiness and reliability. For security reasons, Form SF-85 can only be submitted electronically through the electronic Questionnaire for Investigations Processing (e-QIP) Web site, a secure Web site that is owned and operated by the Office of Personnel Management (OPM). To obtain online access to the form, the requester should

<sup>4</sup> Broad SGI requests under these procedures are unlikely to meet the standard for need to know. Furthermore, NRC staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. The procedures in this document of proposed rulemaking do not authorize unrestricted disclosure or less scrutiny of a requester's need to know than ordinarily would be applied in connection with either adjudicatory or non-adjudicatory access to SGI.

contact the NRC's Office of Administration at 301-492-3524.<sup>5</sup>

(c) A completed Form FD-258 (fingerprint card), signed in original ink, and submitted under 10 CFR 73.57(d). Copies of Form FD-258 may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; by calling 301-415-5877 or 301-492-7311; or by e-mail to [Forms.Resource@nrc.gov](mailto:Forms.Resource@nrc.gov). The fingerprint card will be used to satisfy the requirements of 10 CFR Part 2, 10 CFR 73.22(b)(1), and Section 149 of the Act, which mandates that all persons with access to SGI must be fingerprinted for a Federal Bureau of Investigation identification and criminal history records check;

(d) A check or money order in the amount of \$200.00<sup>6</sup> payable to the NRC for each individual for whom the request for access has been submitted; and

(e) If the requester or any individual who will have access to SGI believes they belong to one or more of the categories of individuals relieved from the criminal history records check and background check requirements, as stated in 10 CFR 73.59, the requester should also provide a statement specifically stating which relief the requester is invoking, and explaining the requester's basis (including supporting documentation) for believing that the relief is applicable. While processing the request, the NRC's Office of Administration, Personnel Security Branch, will make a final determination whether the stated relief applies. Alternatively, the requester may contact the Office of Administration for an evaluation of their status prior to submitting the request. Persons who are not subject to the background check are not required to complete the Form SF-85 or Form FD-258; however, all other requirements for access to SGI, including the need to know, are still applicable.

Copies of documents and materials required by paragraphs 4(b), (c), (d), and (e), as applicable, of this section of this document must be sent to the following address: Office of Administration, U.S. Nuclear Regulatory Commission, Personnel Security Branch, Mail Stop: TWB-05 B32M, Washington, DC 20555-0012.

<sup>5</sup> The requester will be asked to provide his or her full name, Social Security number, date and place of birth, telephone number, and e-mail address. After providing this information, the requester usually should be able to obtain access to the online form within 1 business day.

<sup>6</sup> This fee is subject to change pursuant to the OPM's adjustable billing rates.

These documents and materials should not be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as required above.

5. To avoid delays in processing requests for access to SGI, all forms should be reviewed for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete or illegible packages to the sender without processing.

6. Based on an evaluation of the information submitted under paragraphs 3(a) and (b), or 4(a), (b), (c), and (e) of this section, as applicable, the NRC will determine within 10 days of receipt of the written access request whether the requester has established a legitimate need for the SUNSI access or "need to know" the SGI requested.

7. For SUNSI access requests, if the NRC determines that the requester has established a legitimate need for access to SUNSI, the NRC will notify the requester in writing that access to SUNSI has been granted, provided however, that if the SUNSI consists of PI (*i.e.*, trade secrets or confidential or financial information), the NRC must first notify the applicant of the NRC's determination to grant access to the requester not less than 10 days before informing the requester of the NRC's decision. If the applicant wishes to challenge the NRC's determination, it must follow the procedures in paragraph 12 of this section. The NRC will not provide the requester access to disputed PI until the procedures in paragraph 12 of this section are completed.

The written notification to the requester will contain instructions on how the requester may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions will include, but are not necessarily limited to, the signing of a protective order presenting terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI. Claims that the provisions of such a protective order have not been complied with may be filed by calling NRC's toll-free safety hotline at 800-695-7403. Please note that calls to this number are not recorded between the hours of 7 a.m. to 5 p.m. Eastern Time. However, calls received outside these hours are answered by the NRC's Incident Response Operations Center on a recorded line. Claims may also be filed via e-mail sent to [NRO\\_Allegations@nrc.gov](mailto:NRO_Allegations@nrc.gov), or may be

sent in writing to the U.S. Nuclear Regulatory Commission, ATTN: N. Rivera-Feliciano, Mail Stop: T-7D24, Washington, DC 20555-0001.

8. For requests for access to SGI, if the NRC determines that the requester has established a need to know the SGI, the NRC's Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by 10 CFR 73.22(b). If the NRC's Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requester in writing. The notification will provide the names of approved individuals as well as the conditions under which the SGI will be provided. Those conditions will include, but are not necessarily limited to, the signing of a protective order by each individual who will be granted access to SGI. Claims that the provisions of such a protective order have not been complied with may be filed by calling NRC's toll-free safety hotline at 1-800-695-7403. Please note that calls to this number are not recorded between the hours of 7 a.m. to 5 p.m. Eastern Time. However, calls received outside these hours are answered by the NRC's Incident Response Operations Center on a recorded line. Claims may also be filed via e-mail sent to [NRO\\_Allegations@nrc.gov](mailto:NRO_Allegations@nrc.gov), or may be sent in writing to the U.S. Nuclear Regulatory Commission, ATTN: N. Rivera-Feliciano, Mail Stop: T-7D24, Washington, DC 20555-0001. Because SGI requires special handling, initial filings with the NRC should be free from such specific information. If necessary, the NRC will arrange an appropriate setting for transmitting SGI to the NRC.

9. Release and Storage of SGI. Prior to providing SGI to the requester, the NRC will conduct (as necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of 10 CFR 73.22. Alternatively, recipients may choose to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

10. Filing of Comments on the Proposed Design Certification. Any comments in this rulemaking proceeding that are based upon the disclosed SUNSI or SGI must be filed by the requester no later than 25 days after receipt of (or access to) that information, or the close of the public comment period, whichever is later. The commenter must comply with the NRC requirements regarding the submission

of SUNSI and SGI to the NRC when submitting comments to the NRC (including marking and transmission requirements).

#### 11. Review of Denials of Access.

(a) If the request for access to SUNSI or SGI is denied by the NRC, the staff shall promptly notify the requester in writing, briefly stating the reason or reasons for the denial.

(b) Before the NRC's Office of Administration makes an adverse determination regarding the trustworthiness and reliability of the proposed recipient(s) of SGI, the NRC's Office of Administration, under 10 CFR 2.705(c)(3)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under 10 CFR 73.57(e)(1), so that the proposed recipient is provided an opportunity to correct or explain information.

(c) Appeals from a denial of access must be made to the NRC's Executive Director for Operations (EDO) under 10 CFR 9.29. The decision of the EDO constitutes final agency action, as provided in 10 CFR 9.29(d).

12. Predisclosure Procedures for SUNSI Constituting Trade Secrets or Confidential Commercial or Financial Information. The NRC will follow the procedures in 10 CFR 9.28 if the NRC determines, under paragraph 7 of this section, that access to SUNSI constituting trade secrets or confidential commercial or financial information will be provided to the requester. However, any objection filed by the applicant under 10 CFR 9.28(b) must be filed within 15 days of the NRC notice in paragraph 7 of this section rather than the 30-day period provided for under that paragraph. In applying the provisions of 10 CFR 9.28, the applicant for the DCR will be treated as the "submitter."

### VIII. Plain Language

The Presidential memorandum "Plain Language in Government Writing" published on June 10, 1998 (63 FR 31883), directed that the Government's documents be in clear and accessible language. The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the NRC as explained in the **ADDRESSES** heading of this document.

### IX. Voluntary Consensus Standards

The National Technology and Transfer Act of 1995, Public Law 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus



standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC proposes to approve Amendment 1 to the AP1000 standard plant design for use in nuclear power plant licensing under 10 CFR part 50 or 52. Design certifications (and amendments thereto) are not generic rulemakings establishing a generally applicable standard with which all 10 CFR parts 50 and 52 nuclear power plant licensees must comply. Design certifications (and amendments thereto) are Commission approvals of specific nuclear power plant designs by rulemaking. Furthermore, design certifications (and amendments thereto) are initiated by an applicant for rulemaking, rather than by the NRC. For these reasons, the NRC concludes that the National Technology and Transfer Act of 1995 does not apply to this proposed rule.

#### **X. Finding of No Significant Environmental Impact: Availability**

The Commission has determined under NEPA, and the Commission's regulations in Subpart A, "National Environmental Policy Act; Regulations Implementing Section 102(2)," of 10 CFR part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," that this proposed DCR, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement (EIS) is not required. The basis for this determination, as documented in the EA, is that the Commission has made a generic determination under 10 CFR 51.32(b)(2) that there is no significant environmental impact associated with the issuance of an amendment to a design certification. This amendment to 10 CFR part 52 would not authorize the siting, construction, or operation of a facility using the amended AP1000 design; it would only codify the amendment to the AP1000 design in a rule. The NRC will evaluate the environmental impacts and issue an EIS as appropriate under NEPA as part of the application for the construction and operation of a facility referencing this amendment to the AP1000 DCR. In addition, as part of the draft EA for the amendment to the AP1000 design, the NRC reviewed Westinghouse's evaluation of various design alternatives to prevent and mitigate severe accidents in Appendix 1B of the AP1000 DCD Tier 2. According to 10 CFR 51.30(d), an EA for a design certification amendment is limited to the consideration of whether the design change, which is the subject

of the proposed amendment renders a SAMDA previously rejected in the earlier EA to become cost beneficial, or results in the identification of new SAMDAs, in which case the costs and benefits of new SAMDAs and the bases for not incorporating new SAMDAs in the design certification must be addressed. Based upon review of Westinghouse's evaluation, the Commission concludes that the proposed design changes: (1) Do not cause a SAMDA previously rejected in the EA for the initial AP1000 design certification to become cost beneficial; and (2) do not result in the identification of any new SAMDAs that could become cost beneficial.

The Commission is requesting comment on the draft EA. As provided in 10 CFR 51.31(b), comments on the draft EA will be limited to the consideration of SAMDAs as required by 10 CFR 51.30(d). The Commission will prepare a final EA following the close of the comment period for the proposed standard design certification. If a final rule is issued, all environmental issues concerning SAMDAs associated with the information in the final EA and Appendix 1B of the AP1000 DCD Tier 2 will be considered resolved for plants referencing Amendment 1 to the AP1000 design whose site parameters are within those specified in SAMDA evaluation. The existing site parameters specified in the SAMDA evaluation are not affected by this design certification amendment.

The draft EA, upon which the Commission's finding of no significant impact is based, and Revision 18 of the AP1000 DCD are available for examination and copying at the NRC's PDR, One White Flint North, 11555 Rockville Pike, Room O-1 F21, Rockville, Maryland 20852.

#### **XI. Paperwork Reduction Act Statement**

This proposed rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). This rule has been submitted to OMB for review and approval of the information collection requirements.

*Type of submission, new or revision:* Revision.

*The title of the information collection:* 10 CFR part 52, AP1000 Design Certification Amendment.

*The form number if applicable:* N/A.

*How often the collection is required:* On occasion. Reports required under 10 CFR part 52, Appendix D, paragraph IV.A.4, are collected and evaluated once

if licensing action is sought on a COL application referencing the AP1000 design and the COL applicant is not using the entity that was the original applicant for the design certification, or amendment, to supply the design for the license applicant's use. In addition, COL applicants and the applicant for a design certification must keep records of the aircraft impact assessment performed to comply with the requirements of 10 CFR 50.150(a).

*Who will be required or asked to report:* COL applicants and one applicant for a design certification.

*An estimate of the number of annual responses:* 8 (0 annual responses plus 8 recordkeepers).

*The estimated number of annual respondents:* 8.

*An estimate of the total number of hours needed annually to complete the requirement or request:* 24 hours (0 hours reporting and 24 hours recordkeeping).

*Abstract:* The NRC proposes to amend its regulations to certify an amendment to the AP1000 standard plant design to bring the design into compliance with NRC's regulations and to increase standardization of the design. This action is necessary so that applicants or licensees intending to construct and operate an AP1000 design may do so by referencing this DCR as amended.

The NRC is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

A copy of the OMB clearance package may be viewed free of charge at the NRC's PDR, One White Flint North, 11555 Rockville Pike, Room O1-F21, Rockville, Maryland 20852. The OMB clearance package and rule are available at the NRC Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/index.html> for 60 days after the signature date of this document.

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by March 28, 2011 to the Information



Services Branch (T5–F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by e-mail to [INFOCOLLECTS.RESOURCE@NRC.GOV](mailto:INFOCOLLECTS.RESOURCE@NRC.GOV); and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0151), Office of Management and Budget, Washington, DC 20503. Comments on the proposed information collections may also be submitted via the Federal rulemaking Web site, <http://www.regulations.gov>, Docket ID NRC–2010–0131. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. You may also e-mail comments to [Christine J. Kymn@omb.eop.gov](mailto:Christine.J.Kymn@omb.eop.gov) or comment by telephone at 202–395–4638.

#### *Public Protection Notification*

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

#### **XII. Regulatory Analysis**

The NRC has not prepared a regulatory analysis for this proposed rule. The NRC prepares regulatory analyses for rulemakings that establish generic regulatory requirements applicable to all licensees. Design certifications (and amendments thereto) are not generic rulemakings in the sense that design certifications (and amendments thereto) do not establish standards or requirements with which all licensees must comply. Rather, design certifications (and amendments thereto) are Commission approvals of specific nuclear power plant designs by rulemaking, which then may be voluntarily referenced by applicants for COLs. Furthermore, design certification rulemakings are initiated by an applicant for a design certification (or amendments thereto), rather than the NRC. Preparation of a regulatory analysis in this circumstance would not be useful because the design to be certified is proposed by the applicant rather than the NRC. For these reasons, the Commission concludes that preparation of a regulatory analysis is neither required nor appropriate.

#### **XIII. Regulatory Flexibility Certification**

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule would not, if promulgated, have a significant economic impact on a substantial

number of small entities. This proposed rule provides for certification of an amendment to a nuclear power plant design. Neither the design certification amendment applicant, nor prospective nuclear power plant licensees who reference this DCR, fall within the scope of the definition of “small entities” presented in the Regulatory Flexibility Act, or the size standards established by the NRC (10 CFR 2.810). Thus, this rule does not fall within the purview of the Regulatory Flexibility Act.

#### **XIV. Backfitting**

The NRC has determined that this proposed rule meets the requirements of the backfit rule, 10 CFR 50.109, and the requirements governing changes to DCRs in 10 CFR 52.63(a)(1).

The proposed rule does not constitute backfitting as defined in the backfit rule (10 CFR 50.109) with respect to operating licenses under 10 CFR part 50 because there are no operating licenses referencing this DCR.

Westinghouse requested many changes to the AP1000 DCD to correct spelling, punctuation, or similar errors, which result in text that has the same essential meaning. The NRC concludes that these Westinghouse-requested changes, which are editorial in nature, neither constitute backfitting as defined in 10 CFR 50.109(a)(1), nor are these changes inconsistent with the issue finality provisions of 10 CFR 52.63 or 10 CFR 52.83. The backfitting and issue finality provisions were not meant to apply to such editorial changes inasmuch as such changes would have insubstantial impact on licensees with respect to their design and operation, and are not the kind of changes falling within the policy considerations that underlie the backfit rule and the issue finality provisions of 10 CFR 52.63 and 52.83.

Westinghouse also requested changes to the AP1000 DCD, which the NRC understands were the result of requests to Westinghouse from COL applicants referencing the AP1000 design, to achieve consistency in description and approach in different portions of the DCD. In the absence of a generic change to the AP1000, the referencing COL applicants stated to Westinghouse and the NRC that each would likely take plant-specific departures to address the inconsistency. While this could result in more consistency within any given COL application, it would result in inconsistencies among the different referencing COLs, which is inconsistent with the overall standardization goal of 10 CFR part 52. Accordingly, the NRC concludes that the Westinghouse-requested changes to the AP1000 to

address consistency do not constitute backfitting under the backfit rule (in as much as they are voluntary) and are not otherwise inconsistent with the issue finality provisions of 10 CFR 52.63 and 52.83.

Westinghouse also proposed numerous substantive changes to the AP1000 design, including, but not limited to, minor component design details, replacement of a design feature with another having similar performance (e.g., turbine manufacturer, power for the auxiliary boiler), and changes allowing additional capability for operational flexibility (e.g., liquid waste holdup tanks, unit reserve transformer). Westinghouse included within its application a detailed list of each DCD content change and the basis under 10 CFR 52.63(a)(1) that supports including that change in this amendment.

With respect to DCD Revision 18, the bases under 10 CFR 52.63(a)(1) for the various changes to the DCD are documented in an enclosure, entitled Revision Change Roadmap, to a December 1, 2010, Westinghouse letter sent to the NRC. This Revision Change Roadmap cross-references the DCD changes in DCD Revision 18, as compared to DCD Revision 17, and applicable 10 CFR 52.63(a)(1) criteria. Revision 18 contains both proposed changes previously described in the design change packages and changes already accepted by the NRC in the review process of Revision 17 to the AP1000 DCD. In the course of the review of both design change packages, the NRC determined that DCD changes were needed. In response to NRC questions, Westinghouse proposed such changes. Once the NRC was satisfied with these DCD markups, they were documented in the safety evaluation report (SER) as “confirmatory items” (CIs). The CIs were first identified during the NRC’s review of Revision 17 of the AP1000 DCD. With the review of Revision 18, the NRC will confirm that Westinghouse has made those changes to the DCD accepted by the NRC that were not addressed in Revision 17 to the AP1000 DCD. The use of CIs is restricted to cases where the NRC has reviewed and approved specific design control document proposals. For the final rule, the NRC will complete the review of the CIs and prepare an FSER reflecting that action. The CIs are closed based upon an acceptable comparison between the revised DCD text and the text required by the CI. No technical review of Revision 18 by the NRC is necessary, because only CIs and design changes pursuant to DC/COL–ISG–011,

previously accepted by the NRC, are contained in Revision 18 to the DCD.

A September 22, 2008, Westinghouse letter provides a similar set of cross-references for those changes associated with DCD Revision 17, as compared to DCD Revision 16. For Revision 16, in contrast, Westinghouse used TRs to identify the DCD changes in DCD Revision 16, as compared to DCD Revision 15, and listed the corresponding applicable 10 CFR 52.63(a)(1) criteria in an enclosure to a Westinghouse letter dated May 26, 2007 (Table 1). These tables include the editorial and consistency changes described above as well as design changes. In the course of the NRC review of the technical changes proposed by Westinghouse, the NRC considered the basis offered by Westinghouse and made conclusions about whether the criteria of 10 CFR 52.63(a) were satisfied. These conclusions are included in the chapters of the Advanced Final Safety Evaluation Report. The NRC concluded that all of these changes met at least one of the criteria in 10 CFR 52.63(a) and are not otherwise inconsistent with the issue finality provisions of 10 CFR 52.63 and 52.83. Fifteen of the most significant changes are discussed below, to show that each of the 15 substantive changes to the AP1000 certified design meet at least one of the criteria in 10 CFR 52.63(a)(1)(i) through (a)(1)(vii) and, therefore, do not constitute a violation of the finality provisions in that section.

Revision 17 provides a similar cross-reference in the DCD as submitted by a September 22, 2008, Westinghouse letter for those changes associated with Revision 17. Revision 16 on the other hand, uses TRs to identify the DCD changes and lists the corresponding applicable 10 CFR 52.63(a)(1) criteria in an enclosure to a Westinghouse letter, dated May 26, 2007 (Table 1). These tables include the editorial and consistency changes described above as well as design changes. In the course of the NRC review of the technical changes proposed by Westinghouse, the NRC considered the basis offered by Westinghouse and made conclusions about whether the criteria of 10 CFR 52.63(a) were satisfied. These conclusions are included in the chapters of the Advanced Final Safety Evaluation Report. The NRC concluded that all of these changes met at least one of the criteria in 10 CFR 52.63(a) and are not otherwise inconsistent with the issue finality provisions of 10 CFR 52.63 and 52.83. Fifteen of the most significant changes are discussed below, to show that each of the 15 substantive changes to the AP1000 certified design meet at

least one of the criteria in 10 CFR 52.63(a)(1)(i) through (a)(1)(vii) and, therefore, do not constitute a violation of the finality provisions in that section.

I. 10 CFR 52.63 Criterion (a)(1)(iv): Provides the Detailed Design Information to be Verified under those ITAAC, which are Directed at Certification Information (i.e., DAC).

*Title:* Removal of Human Factors Engineering Design Acceptance Criteria from the Design Control Document.

*Item:* 1 of 15.

*Significant Change:* The ITAAC Design Commitments for Human Factor Engineering (HFE) is in Tier 1, Table 3.2-1. In Revision 17 of the AP1000 DCD, Westinghouse proposed deletion of the Human Factors DAC (Design Commitments 1 through 4) and provided sufficient supporting documentation to meet the requirements of these ITAAC. Design Commitment 1 pertains to the integration of human reliability analysis with HFE design. Design Commitment 2 pertains to the HFE task analysis. Design Commitment 3 pertains to the human-system interface. Design Commitment 4 pertains to the HFE program verification and validation implementation. The information developed by Westinghouse to satisfy these ITAAC is included in Chapter 18 of the DCD.

*Location within the Safety Evaluation (SER) where the changes are principally described:*

The details of the NRC's evaluation of Westinghouse's design features associated with the HFE DAC are in Sections 18.7.6 (design commitment 1), 18.5.9 (design commitment 2), 18.2.8 (design commitment 3), and 18.11 (design commitment 4) of the SER (ADAMS Accession No. ML103260072).

*Evaluation of the Criteria in 10 CFR 52.63(a)(1):*

The additional information included in Tier 2 provides detailed design information on human factors design that would otherwise have to be addressed through verification of implementation of the human factors DAC. Therefore, the changes to the DCD eliminate the need for DAC on human factors and meet the finality criteria in § 52.63(a)(1)(iv).

*Title:* Change to Instrumentation and Control DAC and Associated ITAAC.

*Item:* 2 of 15.

*Significant Change:* In the proposed revision to DCD Chapter 7, Westinghouse chose the Common Q platform to implement the Protection and Safety Monitoring System (PMS) and removed all references to the Eagle 21 platform. This design change, coupled with the development of other information about the PMS system

definition design phase, was the basis for Westinghouse's proposed removal of its Tier 1, Chapter 2, Section 2.5.2, Design Commitment 11(a) Design Requirements phase from Table 2.5.2-8, "Inspections, Tests, Analyses, and Acceptance Criteria," for the PMS.

In its proposed revision to the DCD in Chapter 7, Westinghouse altered its design for the Diverse Actuation System (DAS) by implementing it with Field Programmable Gate Array (FPGA) technology instead of microprocessor-based technology. Additional information about the design process for the DAS was added as the basis for Westinghouse's proposed completion of its Tier 1, Chapter 2, Section 2.5.1, Design Commitment 4a) and 4b) Design Requirements and System Definition phases from Table 2.5.1-4 "Inspections, Tests, Analyses, and Acceptance Criteria" for the DAS.

*Location within the Safety Evaluation (SER) where the changes are principally described:*

The details of the NRC's evaluation of Westinghouse's design features associated with I&C DAC and ITAAC are in Sections 7.2.2.3.14, 7.2.5, 7.8.2, 7.9.2, and 7.9.3 of the SER (ADAMS Accession No. ML103260072).

*Evaluation of the Criteria in 10 CFR 52.63(a)(1):*

Westinghouse provided additional information that incorporates the results of the design process implementation for the PMS and DAS (which both support completion of Design Commitments 11a from Table 2.5.2-8 and 4a and 4b from Table 2.5.1-4, respectively) into the DCD. The additional information included in Tier 2 provides detailed design information on I&C design that would otherwise have to be addressed through verification of implementation of the I&C DAC. Therefore, the changes to the DCD eliminate the need for DAC on I&Cs and meet the finality criteria in § 52.63(a)(1)(iv).

II. 10 CFR 52.63 CRITERION (a)(1)(vii): Contributes to Increased Standardization of the Certification Information

The changes being proposed for the AP1000 amendment generally fall into one of two categories: (1) Changes which provide additional information or a greater level of detail not previously available in the currently-approved version of the AP1000 DCD (Revision 15); or (2) changes requested by COL applicants referencing the AP1000 who would plan to include these changes in their application as departures if they were not approved in the AP1000 DCR amendment. The Commission concludes that both categories of

changes meet the 10 CFR 52.63 criterion of “contributes to increased standardization.” The bases for the Commission’s conclusions, including each category of change, are discussed below.

*Additional and more detailed information:*

Westinghouse proposes that the DCD be changed by adding new, more detailed design information that expands upon the design information already included in the DCD. This information would be used by every COL referencing the AP1000 DCR. Incorporating these proposed changes into the AP1000 DCR as part of this amendment contributes to the increased standardization of the certification information by eliminating the possibility of multiple departures. Therefore, these changes enhance standardization, and meet the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

*Changes for which COL applicants would otherwise request departures:*

Westinghouse proposes several changes to its DCD with the stated purpose of contributing to increased standardization. Westinghouse represents that these changes were requested by the lead COL applicants currently referencing the AP1000. The NRC, in meetings with these applicants as part of the “Design-Centered Working Group” process for jointly resolving licensing issues, confirmed that these applicants requested these changes and committed to pursuance of plant-specific departures from the AP1000 if Westinghouse did not initiate such changes to the AP1000 DCR. Such departures may be pursued by individual COL applicants (and licensees) as described in Part VIII, “Processes for Changes and Departures” of the AP1000 DCR (Appendix D to 10 CFR Part 52). Incorporating these proposed changes into the AP1000 DCR as part of this amendment contributes to the increased standardization of the certification information by eliminating the possibility of multiple departures. Therefore, all Westinghouse-initiated changes for the purpose of eliminating plant-specific departures enhance standardization, and meet the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

*Title:* Minimization of Contamination (10 CFR 20.1406 (b)).

*Item:* 3 of 15.

*Significant Change:* In DCD Section 12.1.2.4, Westinghouse discussed features incorporated into the amended design certification to demonstrate compliance with 10 CFR 52.47(a)(6), which requires that a design

certification application include the information required by 10 CFR 20.1406 (b), which was adopted in 2007 as part of the general revisions to 10 CFR part 52. This regulation requires design certification applicants whose applications are submitted after August 20, 1997, to describe how the design will minimize, to the extent practicable, contamination of the facility and the environment, facilitate decommissioning and minimize the generation of radioactive waste. The DCD changes are documented in Westinghouse Technical Report 98, “Compliance with 10 CFR 20.1406” (APP-GW-GLN-098), Revision 0 (ADAMS Accession No. ML071010536). Westinghouse evaluated contaminated piping, the spent fuel pool (SFP) air handling systems, and the radioactive waste drain system to show that piping and components utilize design features that will prevent or mitigate the spread of contamination within the facility or the environment. Westinghouse has incorporated modifications and features such as elimination of underground radioactive tanks, RCPs without mechanical seals, fewer embedded pipes, less radioactive piping in the auxiliary building and containment vessel, and monitoring the radwaste discharge pipeline to demonstrate that the AP1000 design certification, as amended, will be in compliance with the subject regulation and Regulatory Guidance (RG) 4.21, “Minimization of Contamination and Radioactive Waste Generation: Life-Cycle Planning,” (June 2008).

*Location within the SER where the changes are principally described:*

The details of the NRC’s evaluation of Westinghouse’s design features are in Section 12.2 of the SER (ADAMS Accession No. ML103260072).

*Evaluation of the Criteria in 10 CFR 52.63(a)(1)(vii):*

Inclusion in the DCD of the more detailed information about the features for minimization of contamination provides additional information to be included in the DCD for the AP1000 that increases standardization of the AP1000 design. Thus, the changes meet the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

*Title:* Extension of Seismic Spectra to Soil Sites and Changes to Stability and Uniformity of Subsurface Materials and Foundations.

*Item:* 4 of 15.

*Significant Change:* In AP1000 DCD Tier 2, Sections 2.5.2 and 3.7, Westinghouse extended the AP1000 design to five soil profiles, including firmrock through soft soil sites, for Category I structures, systems, and

components. The certified design included only hard rock conditions. To support the technical basis for the extension, Westinghouse provided: seismic analysis methods, procedures for analytical modeling, soil-structure interaction analysis with three components of earthquake motion, and interaction of non-seismic Category I structures with seismic Category I structures. Also, in DCD Section 2.5.4, Westinghouse extended the AP1000 design with “Stability and Uniformity of Subsurface Materials and Foundations,” where the DCD presents the requirements related to subsurface materials and foundations for COL applicants referencing AP1000 standard design. The site-specific information includes excavation, bearing capacity, settlement, and liquefaction potential. On April 21, 2010, Westinghouse submitted Revision 5 to TR-03, “Extension of Nuclear Island Seismic Analysis to Soil Sites,” Revision 0, and summarized the report in DCD Appendix 3G, to provide more detail about its analyses.

*Location within the SER where the changes are principally described:*

The details of the NRC’s evaluation of Westinghouse’s design features associated with extension of seismic spectra to soil sites are in Section 3.7 of the SER (ADAMS Accession No. ML103260072). The details of the NRC’s evaluation of Westinghouse’s design features associated with stability and uniformity of subsurface materials and foundations are in Sections 2.5.2 and 2.5.4 of the SER (ADAMS Accession No. ML103260072).

*Evaluation of the Criteria in 10 CFR 52.63(a)(1):*

Westinghouse submitted a change to the DCD that would provide the seismic design and supporting analysis for a range of soil conditions representative of expected applicants for a COL referencing the AP1000 design. As a result, the certified design can be used at more sites without the need for departures to provide site-specific analyses or design changes, thus leading to a more uniform analysis and seismic design for all the AP1000 plants. Including in the DCD the information demonstrating adequacy of the design for seismic events for a wider range of soil conditions is a change that provides additional information leading to increased standardization of this aspect of the design. In addition, the change reduces the need for COL applicants to seek departures from the current AP1000 design in as much as most sites do not conform to the currently-approved hard rock sites. Therefore, the change increases standardization and

meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

*Title:* Long-Term Cooling.

*Item:* 5 of 15.

*Significant Change:* DCD Tier 2, Section 6.3.8 describes the changes to COL information items related to containment cleanliness and verification of water sources for long-term recirculation cooling following a loss-of-coolant accident (LOCA). The COL information item related to verification of water sources for long-term recirculation cooling following a LOCA was closed based on Westinghouse TR-26, "AP1000 Verification of Water Sources for Long-Term Recirculation Cooling Following a LOCA," APP-GW-GLR-079 (ADAMS Accession No. ML102170123) and other information contained in DCD Chapter 6. Section 6.3.2.2.7 describes the evaluation of the water sources for long-term recirculation cooling following a LOCA, including the design and operation of the AP1000 PCCS debris screens. DCD Tier 1, Section 2.2.3, includes the associated design descriptions and ITAAC. The COL information item requires a cleanliness program to limit the amount of latent debris in containment consistent with the analysis and testing assumptions.

*Location within the SE where the changes are principally described:*

The details of the NRC's evaluation of Westinghouse's design features associated with long-term cooling in the presence of LOCA-generated and latent debris and General Design Criteria 35 and 38 are in Subsection 6.2.1.8 of the SE (ADAMS Accession No. ML103260072).

*Evaluation of the Criteria in 10 CFR 52.63(a)(1):*

Inclusion in the DCD of the design and analysis information that demonstrates adequacy of long-term core cooling provides additional information leading to increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

*Title:* Control Room Emergency Habitability System.

*Item:* 6 of 15.

*Significant Change:* DCD Tier 2, Section 6.4 has undergone significant revision. Westinghouse re-designed its main control room emergency habitability system to meet control room radiation dose requirements using the standard assumed in-leakage of 5 cubic feet per minute in the event of a release of radiation. The changes include the addition of a single-failure proof passive filter train. The flow through the filter train is provided by an eductor

downstream of a bottled air supply. These changes were prompted by Westinghouse's proposal to revise the atmospheric dispersion factors from those certified in Revision 15 to larger values to better accommodate COL sites. As a result, other design changes were needed to maintain doses in the control room within acceptable limits.

*Location within the SER where the changes are principally described:*

The details of the NRC's evaluation of Westinghouse's design features associated with radiation dose to personnel under accident conditions are in Section 6.4 of the SER (ADAMS Accession No. ML103260072).

*Evaluation of the Criteria in 10 CFR 52.63(a)(1):*

Incorporation of design changes to the main control room ventilation systems would contribute to increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

*Title:* Changes to the Component Cooling Water System.

*Item:* 7 of 15.

*Significant Change:* In Revision 18 to AP1000 DCD Tier 2, Westinghouse proposed changes to the design of the component cooling water system (CCWS) to modify the closure logic for system motor-operated containment isolation valves and install safety-class relief valves on system supply and return lines. The closure logic would close the isolation valves upon a high reactor coolant pump (RCP) bearing water temperature signal, which might be indicative of a large leak in the heat exchanger tube. This change would automatically isolate this potential leak to eliminate the possibility of reactor coolant from a faulted heat exchanger discharging to portions of the CCWS outside containment.

*Location within the SER where the changes are principally described:*

The details of the NRC's evaluation of Westinghouse's design features associated with the CCWS are in Chapter 23, Section V, of the SER (ADAMS Accession No. ML103260072).

*Evaluation of the Criteria in 10 CFR 52.63(a)(1):*

Westinghouse included changes to the component cooling water in the DCD. These changes will contribute to increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

*Title:* Changes to Instrumentation and Control Systems.

*Item:* 8 of 15.

*Significant Change:* In AP1000 DCD Tier 2 Sections 7.1 through 7.3,

Westinghouse completed planning activities related to the architecture of its safety related I&C protection system, referred to as the PMS. Westinghouse also proposed changes to the DCD to reflect resolution of PMS interdivisional data communications protocols and methods utilized to ensure a secure development and operational environment. A secure development and operational environment in this context refers to a set of protective actions taken against a predictable set of non-malicious acts (e.g., inadvertent operator actions, undesirable behavior of connected systems) that could challenge the integrity, reliability, or functionality of a digital safety system. The establishment of a secure development and operational environment for digital safety systems involves: (i) measures and controls taken to establish a secure environment for development of the digital safety system against undocumented, unneeded and unwanted modifications and (ii) protective actions taken against a predictable set of undesirable acts (e.g., inadvertent operator actions or the undesirable behavior of connected systems) that could challenge the integrity, reliability, or functionality of a digital safety system during operations.

*Location within the SER where the changes are principally described:*

The details of the NRC's evaluation of Westinghouse's design features associated with I&C systems are in Sections 7.1 through 7.3, and 7.9 of NRC's Chapter 7 SER (ADAMS Accession No. ML103260072).

*Evaluation of the Criteria in 10 CFR 52.63(a)(1):*

Inclusion in the DCD of the more detailed information about the I&C architecture and communications provides additional information leading to increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

*Title:* Changes to the Passive Core Cooling System—Gas Intrusion.

*Item:* 9 of 15.

*Significant Change:* In AP1000 DCD Tier 1 and Tier 2, Westinghouse proposed changes to the design of the PCCS to add manual maintenance vent valves and manual maintenance drain valves, and to re-route accumulator discharge line connections in order to address concerns related to gas intrusion. In addition, Westinghouse provided descriptions of surveillance and venting procedures to verify gas void elimination during plant startup and operations. These proposed changes are responsive to the actions requested

by Generic Letter 2008–01, “Managing Gas Accumulation in Emergency Core Cooling, Decay Heat Removal, and Containment Spray Systems.”

The passive core cooling system (PCCS) provides rapid injection of borated water, which provides negative reactivity to reduce reactor power to residual levels and ensures sufficient core cooling flow. Non-condensable gas accumulation in the PCCS has the potential to delay injection of borated water, which would impact the moderating and heat removal capabilities, thus providing a challenge to the primary fission product barrier and maintenance of a coolable core geometry. As part of its review, the NRC determined that the proposed changes in the design of the PCCS were acceptable for providing protection for design basis events, such as LOCAs.

*Location within the SER where the changes are principally described:*

The NRC’s evaluation of proposed changes to the DCD associated with changes to the PCCS is in Chapter 23, Section L, of the SER (ADAMS Accession No. ML103260072).

*Evaluation of the Criteria in 10 CFR 52.63(a)(1):*

Inclusion in the DCD of the design and analysis information that provides for venting of non-condensable gases provides additional information leading to increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

*Title:* Integrated Head Package—Use of the QuickLoc Mechanism.

*Item:* 10 of 15.

*Significant Change:* In DCD Tier 2, Section 5.3.1.2, Westinghouse describes a revised integrated head package (IHP) design. The new design includes eight QuickLoc penetrations in lieu of the forty-two individual in-core instrument thimble-tube-assembly penetrations on the reactor vessel head, which is a significant decrease in the number of RPV closure head penetrations for access to in-core and core exit instrumentation. The QuickLoc mechanism allows the removal of the RPV closure head without removal of in-core and core exit instrumentation and, thus, decreases refueling outage time and overall occupational exposure. This head package design has been installed on a number of operating plants and, as noted, has several operational and safety advantages.

*Location within the SER where the changes are principally described:*

The details of the NRC’s evaluation of Westinghouse’s design features associated with the (1) IHP and QuickLoc mechanism are in Section

5.2.3 of the SER (ADAMS Accession No. ML103260072) and (2) radiation protection pertaining to the addition of the integrated reactor head package and QuickLoc connectors are in Subsection 12.4.2.3 of the SER (ADAMS Accession No. ML103260072).

*Evaluation of the Criteria in 10 CFR 52.63(a)(1):*

Inclusion in the DCD of the changes to the IHP would contribute to the increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

*Title:* Reactor Coolant Pump Design.

*Item:* 11 of 15.

*Significant Change:* In AP1000 DCD Tier 2 Subsection 5.4.1, Westinghouse proposed changes related to the RCP design. These changes include: change to a single-stage, hermetically sealed, high inertia, centrifugal sealless RCP of canned motor design; use of an externally mounted heat exchanger; and change of the RCP flywheel to bimetallic construction. These DCD changes are documented in: TR–34, “AP1000 Licensing Design Change Document for Generic Reactor Coolant Pump,” APP–GW–GLN–016, November 2006 and in other documentation in response to NRC inquiries. The supporting documentation includes an analysis demonstrating that failure of the flywheel would not generate a missile capable of penetrating the surrounding casing, and, therefore, that such failure would not damage the reactor coolant pressure boundary.

*Location within the SER where the changes are principally described:*

The details of the NRC’s evaluation of Westinghouse’s design features associated with the RCP design are in Section 5.4.1 of the NRC’s Chapter 5 SER (ADAMS Accession No. ML103260072).

*Evaluation of the Criteria in 10 CFR 52.63(a)(1):*

Inclusion in the DCD of the changes to the RCP would reduce the possibility of plant-specific departure requests by COL applicants referencing the AP1000 DCD. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

*Title:* Reactor Pressure Vessel (RPV) Support System.

*Item:* 12 of 15.

*Significant Change:* The RPV structural support system of the AP1000 standard design is designed to provide the necessary support for the heavy RPV in the AP1000 standard design. The original anchorage design was bolting into embedded plates of the CA04 structural module. Subsection 3.8.3.1.1 of the AP1000 DCD Tier 2 would be

changed to reflect modifications to the RPV support design. In the revised design, there are four support “boxes” or “legs” located at the bottom of RPV’s cold leg nozzles. The support boxes are anchored directly to the primary shield wall concrete base via steel embedment plates. This CA04 structural module is no longer used in the new design. The four RV support boxes are safety-related and the design of the RPV associated support structures is consistent with the safe shutdown earthquake design of Seismic Category I equipment. Subsections 3.8.3.5.1 and 5.4.10.2.1 would also be modified.

*Location within the SER where the changes are principally described:*

The details of the NRC’s evaluation of Westinghouse’s design features associated with RPV supports are in Chapter 23, Section R, of the SER (ADAMS Accession No. ML103260072).

*Evaluation of the Criteria in 10 CFR 52.63(a)(1):*

Inclusion in the DCD of the changes to the RPV supports contributes to the increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

*Title:* Spent Fuel Pool Decay Heat Analysis and Associated Design Changes.

*Item:* 13 of 15.

*Significant Change:* In AP1000 DCD Tier 2 Section 9.1.3, Westinghouse proposed changes to the SFP cooling system. Westinghouse proposed to increase the number of spent fuel storage locations from 619 to 889 fuel assemblies and implement the following associated design changes: (1) Increase in component cooling system (CCS) pump design capacity, (2) increase in the CCS supply temperature to plant components, and (3) changes in the CCS parameters related to the RCPs. The increase in the number of assemblies affects the decay heat removal/SFP heatup analyses. The supporting bases for DCD changes are documented in: TR–111, “Component Cooling System and Service Water System Changes Required for Increased Heat Loads,” APP–GW–GLN–111, Revision 0, dated May 2007 (ADAMS Accession No. ML071500563); TR–103, “Fluid System Changes,” APP–GW–GLN–019, Revision 2, dated October 2007 (ADAMS Accession No. ML072830060); TR–108, “AP1000 Site Interface Temperature Limits,” APP–GW–GLN–108, Revision 2, dated September 2007 (ADAMS Accession No. ML103260072), and TR–APP–GW–GLR–097, “Evaluation of the Effect of the AP1000 Enhanced Shield Building on the Containment Response and Safety Analysis,” Revision 1, dated

August 2010 (ADAMS Accession No. ML102220579).

*Location within the SER where the changes are principally described:*

The details of the NRC's evaluation of Westinghouse's design features associated with the SFP decay heat analysis are in Section 9.2.2 of the SER (ADAMS Accession No. ML103260072).

*Evaluation of the Criteria in 10 CFR 52.63(a)(1):*

Inclusion in the DCD of the changes to the SFP decay heat analysis would contribute to the increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

*Title:* Spent Fuel Rack Design and Criticality Analysis.

*Item:* 14 of 15.

*Significant Change:* In DCD Tier 2 Section 9.1.2, Westinghouse proposed changes to the spent fuel racks: (1) to increase the storage capacity by 270 additional fuel assemblies, and (2) to integrate a new neutron poison into the rack design. These changes included a different rack design and associated structural analysis and a revised criticality analysis. These DCD changes are documented in TR-54, "Spent Fuel Storage Racks Structure and Seismic Analysis," APP-GW-GLR-033, Revision 4, dated June 2, 2010 (ADAMS Accession No. ML101580475); and TR-65, "Spent Fuel Storage Racks Criticality Analysis," APP-GW-GLR-029, Revision 2, date January 5, 2010 (ADAMS Accession No. ML100082093).

*Location within the SER where the changes are principally described:*

The details of the NRC's evaluation of Westinghouse's design features associated with the spent fuel rack design and criticality analysis are in Section 9.1.2 of the SER (ADAMS Accession No. ML103260072).

*Evaluation of the Criteria in 10 CFR 52.63(a)(1):*

Inclusion in the DCD of the changes to the spent fuel rack design and criticality analysis would contribute to the increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

*Title:* Vacuum Relief System.

*Item:* 15 of 15.

*Significant Change:* In Revision 18 to AP1000 DCD Tier 2, Chapters 3, 6, 7, 9, and 16, Westinghouse proposed changes to the design of the containment which add a vacuum relief system to the existing containment air filtration system vent line penetration. The proposed vacuum relief system consists of redundant vacuum relief devices inside and outside containment sized to

prevent differential pressure between containment and the shield building from exceeding the design value of 1.7 psig, which could occur under extreme temperature conditions.

Each relief flow path consists of a check valve inside containment and a motor operated butterfly valve outside of containment. The redundant relief devices outside containment share a common inlet line with redundant outside air flow entry points. The outlet lines downstream of the outside containment relief devices are routed to a common header connected to the vent line penetration. The redundant relief devices inside containment share a common inlet line from the vent line penetration and have independent discharge lines into containment.

*Location within the SER where the changes are principally described:*

The details of the NRC's evaluation of Westinghouse's design features associated with the addition of the vacuum relief system are in Chapter 23, Section W, of the SER (ADAMS Accession No. ML103260072).

*Evaluation of the Criteria in 10 CFR 52.63(a)(1):*

Inclusion in the DCD of the introduction of a containment vacuum relief system would contribute to the increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

*Changes Addressing Compliance With Aircraft Impact Assessment Rule (10 CFR 50.150)*

The proposed rule would amend the existing AP1000 DCR, in part, to address the requirements of the AIA rule. The AIA rule itself mandated that a DCR be revised, if not during the DCR's current term, then no later than its renewal to address the requirements of the AIA rule. In addition, the AIA rule provided that any COL issued after the effective date of the final AIA rule must reference a DCR complying with the AIA rule, or itself demonstrate compliance with the AIA rule. The AIA rule may therefore be regarded as inconsistent with the finality provisions in 10 CFR 52.63(a) and Section VI of the AP1000 DCR. However, the NRC provided an administrative exemption from these finality requirements when the final AIA rule was issued. See **Federal Register** notice, 74 FR 28112; June 12, 2009, at 28143–28145. Accordingly, the NRC has already addressed the backfitting implications of applying the AIA rule to the AP1000 with respect to the AP1000 and referencing COL applicants.

## Conclusion

The proposed amendment to the AP1000 DCR does not constitute backfitting and is not otherwise inconsistent with finality provisions in 10 CFR part 52. Accordingly, the NRC has not prepared a backfit analysis or documented evaluation for this rule.

## List of Subjects in 10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification, Incorporation by reference.

For the reasons set out in the preamble and under the authority of the Act, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552; the NRC is proposing to adopt the following amendments to 10 CFR part 52.

## PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

1. The authority citation for 10 CFR part 52 continues to read as follows:

**Authority:** Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005), secs. 147 and 149 of the Atomic Energy Act.

2. In Appendix D to 10 CFR part 52:

- a. In Section III, revise paragraphs A and D;
- b. In Section IV, revise paragraph A.3 and add paragraph A.4;
- c. In Section V, redesignate paragraph A as paragraph A.1 and add a new paragraph A.2;
- d. In Section VI, revise paragraphs B.1, B.2, B.7, and E;
- e. In Section VIII, revise the introductory text of paragraph B.5.b, redesignate paragraphs B.5.d, B.5.e, and B.5.f as paragraphs B.5.e, B.5.f, and B.5.g, respectively, and add a new paragraph B.5.d, and revise paragraphs B.6.b and B.6.c; and
- f. In Section X, revise paragraph A.1 and add a new paragraph A.4.

The revisions and additions read as follows:



## Appendix D to Part 52—Design Certification Rule for the AP1000 Design

\* \* \* \* \*

### III. Scope and Contents

A. Tier 1, Tier 2 (including the investment protection short-term availability controls in Section 16.3), and the generic TSs in the AP1000 DCD (Revision 18, dated December 1, 2010) are approved for incorporation by reference by the Director of the Office of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the generic DCD may be obtained from Stanley E. Ritterbusch, Manager, AP1000 Design Certification, Westinghouse Electric Company, 1000 Westinghouse Drive, Cranberry Township, PA 16066. A copy of the generic DCD is also available for examination and copying at the NRC's PDR, Room O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Copies are available for examination at the NRC Library, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852, telephone 301-415-5610, e-mail [LIBRARY.RESOURCE@NRC.GOV](mailto:LIBRARY.RESOURCE@NRC.GOV). The DCD can also be viewed on the Federal rulemaking Web site <http://www.regulations.gov> by searching for documents filed under Docket ID NRC-2010-0131 or in the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html> by searching under ADAMS Accession No. ML103480059. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

\* \* \* \* \*

D.1. If there is a conflict between the generic DCD and either the application for the initial design certification of the AP1000 design or NUREG-1793, "Final Safety Evaluation Report Related to Certification of the Westinghouse Standard Design," and Supplement No. 1, then the generic DCD controls.

2. If there is a conflict between the generic DCD and either the application for Amendment 1 to the design certification of the AP1000 design or NUREG-1793, "Final Safety Evaluation Report Related to Certification of the Westinghouse Standard Design," Supplement No. 2, then the generic DCD controls.

\* \* \* \* \*

### IV. Additional Requirements and Restrictions

A. \* \* \*

3. Include, in the plant-specific DCD, the SUNSI (including PI) and SGI referenced in the AP1000 DCD.

4. Include, as part of its application, a demonstration that an entity other than Westinghouse is qualified to supply the AP1000 design, unless Westinghouse supplies the design for the applicant's use.

\* \* \* \* \*

### V. Applicable Regulations

A. \* \* \*

2. The regulations that apply to those portions of the AP1000 design approved by Amendment 1 [FINAL RULE FEDERAL REGISTER CITATION] are in 10 CFR parts 20, 50, 73, and 100, codified as of [DATE THE FINAL RULE IS SIGNED BY THE SECRETARY OF THE COMMISSION], that are applicable and technically relevant, as described in the Supplement No. 2 of the FSER.

\* \* \* \* \*

### VI. Issue Resolution

\* \* \* \* \*

B. \* \* \*

1. All nuclear safety issues, except for the generic TS and other operational requirements, associated with the information in the FSER and Supplement Nos. 1 and 2, Tier 1, Tier 2 (including referenced information, which the context indicates is intended as requirements, and the investment protection short-term availability controls in Section 16.3 of the DCD), and the rulemaking records for initial certification and Amendment 1 of the AP1000 design;

2. All nuclear safety and safeguards issues associated with the referenced SUNSI (including PI) and SGI which, in context, are intended as requirements in the generic DCD for the AP1000 design;

\* \* \* \* \*

7. All environmental issues concerning severe accident mitigation design alternatives associated with the information in the NRC's EA for the AP1000 design, Appendix 1B of Revision 15 of the generic DCD, the NRC's final EA for Amendment 1 to the AP1000 design, and Appendix 1B of Revision 18 of the generic DCD, for plants referencing this appendix whose site parameters are within those specified in the severe accident mitigation design alternatives evaluation.

\* \* \* \* \*

E. The NRC will specify at an appropriate time the procedures to be used by an interested person who wishes to review SUNSI (including PI, such as trade secrets or financial information obtained from a person that are privileged or confidential (10 CFR 2.390 and 10 CFR Part 9)) or SGI for the AP1000 certified design, for the purpose of participating in the hearing required by 10 CFR 52.85, the hearing provided under 10 CFR 52.103, or in any other proceeding relating to this appendix in which interested persons have a right to request an adjudicatory hearing.

\* \* \* \* \*

### VIII. Processes for Changes and Departures

\* \* \* \* \*

B. \* \* \*

5. \* \* \*

b. A proposed departure from Tier 2, other than one affecting resolution of a severe accident issue identified in the plant-specific DCD or one affecting information required by 10 CFR 52.47(a)(28) to address 10 CFR 50.150, requires a license amendment if it would:

\* \* \* \* \*

d. If an applicant or licensee proposes to depart from the information required by 10 CFR 52.47(a)(28) to be included in the FSAR for the standard design certification, then the applicant or licensee shall consider the effect of the changed feature or capability on the original assessment required by 10 CFR 50.150(a). The applicant or licensee must also document how the modified design features and functional capabilities continue to meet the assessment requirements in 10 CFR 50.150(a)(1) in accordance with Section X of this appendix.

\* \* \* \* \*

6. \* \* \*

b. A licensee who references this appendix may not depart from the following Tier 2\* matters without prior NRC approval. A request for a departure will be treated as a request for a license amendment under 10 CFR 50.90.

- (1) Maximum fuel rod average burn-up.
- (2) Fuel principal design requirements.
- (3) Fuel criteria evaluation process.
- (4) Fire areas.
- (5) Reactor coolant pump type.
- (6) Small-break LOCA analysis methodology.

c. A licensee who references this appendix may not, before the plant first achieves full power following the finding required by 10 CFR 52.103(g), depart from the following Tier 2\* matters except under paragraph B.6.b of this section. After the plant first achieves full-power, the following Tier 2\* matters revert to Tier 2 status and are subject to the departure provisions in paragraph B.5 of this section.

- (1) Nuclear Island structural dimensions.
- (2) ASME Code piping design restrictions, and ASME Code Cases.
- (3) Design Summary of Critical Sections.
- (4) American Concrete Institute (ACI) 318, ACI 349, American National Standards Institute/American Institute of Steel Construction (ANSI/AISC)-690, and American Iron and Steel Institute, "Specification for the Design of Cold Formed Steel Structural Members, Part 1 and 2," 1996 Edition and 2000 Supplement.

(5) Definition of critical locations and thicknesses.

(6) Seismic qualification methods and standards.

(7) Nuclear design of fuel and reactivity control system, except burn-up limit.

(8) Motor-operated and power-operated valves.

(9) I&C system design processes, methods, and standards.

(10) Passive residual heat removal natural circulation test (first plant only).

(11) Automatic depressurization system and core make-up tank verification tests (first three plants only).

(12) Polar crane parked orientation.

(13) Piping DAC.

(14) Containment vessel design parameters, including ASME Code, Section III, Subsection NE.

(15) Human factors engineering.

\* \* \* \* \*

### X. Records and Reporting

A. \* \* \*

1. The applicant for this appendix shall maintain a copy of the generic DCD that includes all generic changes it makes to Tier 1 and Tier 2, and the generic TS and other operational requirements. The applicant shall maintain SUNSI (including PI) and SGI referenced in the generic DCD for the period that this appendix may be referenced, as specified in Section VII of this appendix.

\* \* \* \* \*

4.a. The applicant for the AP1000 design shall maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) for the term of the certification (including any period of renewal).

b. An applicant or licensee who references this appendix shall maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) throughout the pendency of the application and for the term of the license (including any period of renewal).

\* \* \* \* \*

Dated at Rockville, Maryland, this 16th day of February 2011.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2011-3989 Filed 2-23-11; 8:45 am]

BILLING CODE 7590-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2011-0044; Directorate Identifier 2010-NM-059-AD]

RIN 2120-AA64

#### Airworthiness Directives; The Boeing Company Model 767-200, -300, -300F, and -400ER Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede an existing airworthiness directive (AD) that applies to The Boeing Company Model 767-200, -300, and -300F series airplanes. The existing AD currently requires inspections to detect cracking or corrosion of the fail-safe straps between the side fitting of the rear spar bulkhead at body station 955 and the skin; and follow-on and corrective actions. Since we issued that AD, we have received additional reports of cracks in 51 fail-safe straps on 41 airplanes; we have also received a report of a crack found in the "T" fitting that connects the fail-safe strap to the outboard edge of the pressure deck. This proposed AD would expand the applicability, and would add an

inspection for cracking in the fail-safe strap, and repair or replacement if necessary. We are proposing this AD to detect and correct fatigue cracking or corrosion of the fail-safe straps and the "T" fittings, which could result in cracking of adjacent structure and consequent reduced structural integrity of the fuselage.

**DATES:** We must receive comments on this proposed AD by April 11, 2011.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H-65, Seattle, Washington 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; e-mail [me.boecom@boeing.com](mailto:me.boecom@boeing.com); Internet <https://www.myboeingfleet.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (*phone:* 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; *phone:* 425-917-6577; *fax:* 425-917-6590; *e-mail:* [berhane.alazar@faa.gov](mailto:berhane.alazar@faa.gov).

#### SUPPLEMENTARY INFORMATION:

#### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2011-0044; Directorate Identifier 2010-NM-059-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

#### Discussion

On September 26, 2005, we issued AD 2004-19-06 R1, amendment 39-14313 (70 FR 58000, October 5, 2005), for certain Model 767-200, -300, and -300F series airplanes. That AD requires inspections to detect cracking or corrosion of the fail-safe straps between the side fitting of the rear spar bulkhead at body station (BS) 955 and the skin; and follow-on/corrective actions. That AD resulted from reports of cracked and/or corroded fail-safe straps at BS 955 on Model 767-200 series airplanes. We issued that AD to detect and correct fatigue cracking or corrosion of the fail-safe straps, which could result in cracking of adjacent structure and consequent reduced structural integrity of the fuselage.

#### Actions Since Existing AD Was Issued

Since we issued AD 2004-19-06 R1, we have received additional reports of cracks in 51 fail-safe straps on 41 airplanes. There were 42 fail-safe straps repaired, and 9 were not repairable and were replaced. Fail-safe straps were repaired on 33 airplanes with total accumulated flight cycles ranging from 39,886 to 89,236. Fail-safe straps were replaced on 9 airplanes with flight cycles ranging from 12,565 to 31,809, and flight hours ranging from 48,704 to 93,212. In addition, 4 fail-safe straps on 4 airplanes with total accumulated flight cycles ranging from 12,540 to 23,987 and flight hours ranging from 37,634 to 74,823 were replaced due to corrosion damage.

One report was received of a crack found in the "T" fitting that connects the fail-safe strap and the pressure deck. The cracked "T" fitting was found at



**Mandatory Hearing for Vogtle 3&4  
76 Fed. Reg. 50767-02**



For the Nuclear Regulatory Commission.

**James R. Hall,**

*Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2011-20793 Filed 8-15-11; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

**[NRC-2010-0355; Order EA-11-180; Docket Nos. 70-7003, 70-7004; License Nos. SNM-7003, SNM-2011]**

### In the Matter of USEC Inc., American Centrifuge Lead Cascade Facility, and American Centrifuge Plant; Order Extending the Date by Which the Direct Transfer of Licenses Is To Be Completed

#### I

USEC Inc. (USEC) is the holder of materials licenses SNM-7003 and SNM-2011 for the American Centrifuge Lead Cascade Facility (Lead Cascade) and American Centrifuge Plant (ACP), respectively, which authorize the licensee to: (1) Possess and use source and special nuclear material at the Lead Cascade at the Portsmouth Gaseous Diffusion Plant site in Piketon, Ohio, in accordance with materials license number SNM-7003; and (2) construct and operate a gas centrifuge uranium enrichment facility (the ACP) at the Portsmouth Gaseous Diffusion Plant site in Piketon, Ohio, in accordance with materials license number SNM-2011.

#### II

The U.S. Nuclear Regulatory Commission's (NRC) Order, dated February 10, 2011, approved the direct transfer of the licenses of the above facilities from USEC to the limited liability company American Centrifuge Operating, LLC (ACO), pursuant to Sections 161(b), 161(i), 161(o) and 184 of the Atomic Energy Act, as amended; 42 United States Code (U.S.C.) 2201(b), 2201(i), and 2234; and Title 10 *Code of Federal Regulations* (10 CFR) parts 30.34(b), 40.46, "Inalienability of Licenses," and 70.36, "Inalienability of Licenses." By its terms, the February 10, 2011, Order will become null and void if the license transfers are not completed within 180 days from February 10, 2011 (i.e., by August 9, 2011). However, the February 10 Order further states that upon written application and for good cause shown, the 180-day period may be extended by further Order.

#### III

By letter dated July 22, 2011, as supplemented by electronic communication dated August 1, 2011, USEC submitted a request to extend the date by which the license transfers must be completed from August 9, 2011, to February 9, 2012. USEC stated that it has been working diligently with the Department of Energy over the past several months to conclude the review process for USEC's loan guarantee application, but would not be able to complete this process by August 9, 2011.

USEC states that there have been no changes in the information and technical and financial qualifications presented in its September 10, 2010, request to transfer the licenses. USEC states that the basis for granting that request has, thus, not changed and remains valid. The NRC staff notes that its basis for approving the transfers of USEC's licenses for the Lead Cascade and the ACP from USEC to ACO is documented in its Safety Evaluation Report (SER) supporting the February 10 Order. The NRC staff concluded that the basis for approval has not changed since the issuance of the February 10 Order.

The NRC staff has considered the submittal of July 22, 2011, as supplemented by electronic communication dated August 1, 2011, and has determined that good cause has been shown to extend, until February 9, 2012, the date by which the license transfers must be completed.

#### IV

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 30.34(b), 40.46, "Inalienability of Licenses," and 70.36, "Inalienability of Licenses," *It Is Hereby Ordered* that the date by which the license transfers described above must be completed is extended to February 9, 2012. If the proposed direct transfer of licenses is not completed by February 9, 2012, this Order and the February 10 Order shall become null and void. However, upon written application and for good cause shown, the February 9, 2012, date may be extended by further Order.

This Order is effective upon issuance. The Order of February 10, 2011, as modified by this Order, remains in full force and effect.

For further details with respect to this Order, see the submittal dated July 22, 2011 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML11210B497), as supplemented by electronic

communication dated August 1, 2011 (ADAMS Accession No. ML11213A282), and the SER documenting NRC's staff evaluation of USEC's submittal dated July 22, 2011 (ADAMS Accession No. ML112140088), which may be examined—and/or copied for a fee—at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (First Floor), Rockville, MD 20852; and accessible online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>.

Dated at Rockville, Maryland, this 8th day of August 2011.

For the U.S. Nuclear Regulatory Commission.

**Catherine Haney,**

*Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2011-20792 Filed 8-15-11; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

**[NRC-2008-0441; Docket Nos. 52-025-COL and 52-026-COL]**

### Southern Nuclear Operating Co., et al.; Combined Licenses for Vogtle Electric Generating Plant, Units 3 and 4, and Limited Work Authorizations

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of hearing.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC or the Commission) will convene an evidentiary session to receive testimony and exhibits in the uncontested portion of this proceeding regarding the application of Southern Nuclear Operating Company for two combined licenses (COLs) seeking approval to construct and operate new nuclear power generation facilities at the Vogtle Electric Generating Plant, Units 3 & 4 (VEGP), as well as for two limited work authorizations (LWAs) to engage in selected construction activities. This mandatory hearing will concern safety and environmental matters relating to the proposed issuance of the requested COLs and LWAs.

**DATES:** The hearing will be held on September 27, 2011, from 9 a.m. (Eastern Daylight Time). For a schedule for submitting prefiled documents and deadlines affecting Interested Government Participants, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Rochelle C. Baval, Office of the Secretary, U.S. Nuclear Regulatory

Commission, Washington, DC 20555–0001, telephone: 301–415–1651; e-mail: [Rochelle.Bavol@nrc.gov](mailto:Rochelle.Bavol@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Commission hereby gives notice that, pursuant to Section 189a of the Atomic Energy Act, it will convene an evidentiary session to receive testimony and exhibits in the uncontested portion of this proceeding regarding the March 28, 2008, application of Southern Nuclear Operating Company, acting for itself and Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia, for two Title 10 of the *Code of Federal Regulations* (10 CFR) part 52 combined licenses (COLs), seeking approval to construct and operate new nuclear power generation facilities at the existing Vogtle Electric Generating Plant (VEGP) site near Waynesboro, Georgia. This mandatory hearing will also encompass the applicant's October 2, 2009, request for two limited work authorizations (LWAs) to engage in selected construction activities as defined in 10 CFR 50.10. This mandatory hearing will concern safety and environmental matters relating to the proposed issuance of the requested COLs and LWAs, as more fully described below. Participants in the hearing are not to address any contested issues in their written filings or oral presentations.

##### Matters To Be Considered

The matter at issue in this proceeding is whether the review of the application by the Commission's staff has been adequate to support the findings found in 10 CFR 52.97 and 10 CFR 51.107(a), for each of the COLs to be issued, and in 10 CFR 50.10 and 10 CFR 51.107(d), with respect to the LWAs. Those findings are as follows:

##### *Issues Pursuant to the Atomic Energy Act of 1954, as Amended*

With respect to each COL: (1) Whether the applicable standards and requirements of the Act and the Commission's regulations have been met; (2) whether any required notifications to other agencies or bodies have been duly made; (3) whether there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of the Act, and the Commission's regulations; (4) whether the applicant is technically and financially qualified to engage in the activities authorized; and (5) whether issuance of the license will not be

inimical to the common defense and security or the health and safety of the public.

With respect to the LWAs: (1) Whether the applicable standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's regulations applicable to the activities to be conducted under the LWAs, have been met; (2) whether the applicant is technically qualified to engage in the activities authorized; (3) whether issuance of the LWAs will provide reasonable assurance of adequate protection to public health and safety and will not be inimical to the common defense and security; and (4) whether there are no unresolved safety issues relating to the activities to be conducted under the LWAs that would constitute good cause for withholding the authorization.

##### *Issues Pursuant to the National Environmental Policy Act (NEPA) of 1969, as Amended*

With respect to each COL: (1) Determine whether the requirements of Sections 102(2) (A), (C), and (E) of NEPA and the applicable regulations in 10 CFR part 51 have been met; (2) independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; (3) determine, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering reasonable alternatives, whether the combined license should be issued, denied, or appropriately conditioned to protect environmental values; and (4) determine whether the NEPA review conducted by the NRC staff has been adequate.

With respect to the LWAs: (1) Determine whether the requirements of Section 102(2)(A), (C), and (E) of NEPA and the regulations in Subpart A of 10 CFR part 51 have been met, with respect to the activities to be conducted under the LWAs; (2) independently consider the balance among conflicting factors with respect to the LWAs, which is contained in the record of the proceeding, with a review to determining the appropriate action to be taken; (3) determine whether the redress plan will adequately redress the activities performed under the LWAs, should limited work activities be terminated by the holder or the LWAs be revoked by the NRC, or upon effectiveness of the Commission's final decision denying the COL application; and (4) determine whether the NEPA

review conducted by the NRC staff for the LWAs has been adequate.

##### Evidentiary Uncontested Hearing

The Commission will conduct this hearing beginning at 9 a.m., Eastern Daylight Time (EDT) on September 27, 2011, at the Commission's headquarters in Rockville, Maryland. The hearing on these issues will continue on subsequent days, if necessary.

##### Presiding Officer

The Commission is the presiding officer for this proceeding.

##### Schedule for Submittal of Pre-Filed Documents

No later than September 12, 2011, unless the Commission directs otherwise, the staff and the applicant shall submit a list of its anticipated witnesses for the hearing.

No later than September 12, 2011, unless the Commission directs otherwise, the applicant shall submit its pre-filed written testimony. The staff previously submitted its testimony on August 9, 2011.

The Commission may issue written questions to the applicant or the staff before the hearing. If such questions are issued, an order containing such questions will be issued no later than August 30, 2011. Responses to such questions are due September 12, 2011, unless the Commission directs otherwise.

##### Interested Government Participants

No later than August 26, 2011, any interested State, local government body, or affected, Federally-recognized Indian Tribe may file with the Commission a statement of any issues or questions that the State, local government body, or Indian Tribe wishes the Commission to give particular attention to as part of the uncontested hearing process. Such statement may be accompanied by any supporting documentation that the State, local government body, or Indian Tribe sees fit to provide. Any statements and supporting documentation (if any) received by the Commission using the agency's E-filing system<sup>1</sup> by the

<sup>1</sup> The process for accessing and using the agency's E-filing system is described in the September 16, 2008, notice of hearing that was issued by the Commission for this proceeding. See Notice of Hearing and Opportunity To Petition for Leave To Intervene and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation on a Combined License for the Vogtle Electric Generating Plant Units 3 and 4 [73 FR 53446]. Participants who are unable to use the EIE, or who will have difficulty complying with EIE requirements in the time frame provided for submission of written statements, may provide their statements by electronic mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov).

deadline indicated above will be made part of the record of the proceeding. The Commission will use such statements and documents as appropriate to inform its pre-hearing questions to the Staff and applicant, its inquiries at the oral hearing and its decision following the hearing. The Commission may also request, prior to September 13, 2011, that one or more particular States, local government bodies, or Indian Tribes send one representative each to the evidentiary hearing to answer Commission questions and/or make a statement for the purpose of assisting the Commission's exploration of one or more of the issues raised by the State, local government body, or Indian Tribe in the pre-hearing filings described above. The decision of whether to request the presence of a representative of a State, local government body, or Indian Tribe at the evidentiary hearing to make a statement and/or answer Commission questions is solely at the Commission's discretion. The Commission's request will specify the issue or issues that the representative should be prepared to address.

States, local governments, or Indian Tribes should be aware that this evidentiary hearing is separate and distinct from the NRC's contested hearing process. Issues within the scope of contentions that have been admitted in a contested proceeding for a COL application are outside the scope of the uncontested proceeding for that COL application. In addition, while States, local governments, or Indian Tribes participating as described above may take any position they wish, or no position at all, with respect to issues regarding the COL application or the NRC Staff's associated environmental review that do fall within the scope of the uncontested proceeding (*i.e.*, issues that are not within the scope of admitted contentions), they should be aware that many of the procedures and rights applicable to the NRC's contested hearing process due to the inherently adversarial nature of such proceedings are not available with respect to this uncontested hearing. Participation in the NRC's contested hearing process is governed by 10 CFR 2.309 (for persons or entities, including States, local governments, or Indian Tribes, seeking to file contentions of their own) and 10 CFR 2.315(c) (for interested States, local governments, and Indian Tribes seeking to participate with respect to contentions filed by others). Participation in this uncontested hearing does not affect a State's, local government's, or Indian Tribe's right to

participate in the separate contested hearing process.

Dated at Rockville, Maryland, this 10th day of August 2011.

For the Nuclear Regulatory Commission.

**Andrew L. Bates,**

*Acting Secretary of the Commission.*

[FR Doc. 2011-20938 Filed 8-12-11; 4:15 pm]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[NRC-2011-0006]

### Sunshine Act Meetings

**AGENCY HOLDING THE MEETINGS:** Nuclear Regulatory Commission.

**DATES:** Weeks of August 15, 22, 29, September 5, 12, 19, 2011.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

#### Week of August 15, 2011

There are no meetings scheduled for the week of August 15, 2011.

#### Week of August 22, 2011—Tentative

There are no meetings scheduled for the week of August 22, 2011.

#### Week of August 29, 2011—Tentative

*Tuesday, August 30, 2011*

8:55 a.m. Affirmation Session (Public Meeting) (Tentative)

Final Rule: Enhancements to Emergency Preparedness Regulations (10 CFR part 50 and 10 CFR part 52) (RIN-3150-A110) (Tentative)

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

9 a.m. Information Briefing on Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC) Related Activities (Public Meeting) (Contact: Aida Rivera-Varona, 301-251-4001)

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

#### Week of September 5, 2011—Tentative

There are no meetings scheduled for the week of September 5, 2011.

#### Week of September 12, 2011—Tentative

There are no meetings scheduled for the week of September 12, 2011.

#### Week of September 19, 2011—Tentative

There are no meetings scheduled for the week of September 19, 2011.

\* \* \* \* \*

\* The schedule for Commission meetings is subject to change on short

notice. To verify the status of meetings, call (recording)—(301) 415-1292. Contact person for more information: Rochelle Baval, (301) 415-1651.

\* \* \* \* \*

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/public-involve/public-meetings/schedule.html>.

\* \* \* \* \*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301-415-6200, TDD: 301-415-2100, or by e-mail at [william.dosch@nrc.gov](mailto:william.dosch@nrc.gov). Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

\* \* \* \* \*

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969), or send an e-mail to [darlene.wright@nrc.gov](mailto:darlene.wright@nrc.gov).

Dated: August 11, 2011.

**Rochelle C. Baval,**

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2011-20940 Filed 8-12-11; 4:15 pm]

**BILLING CODE 7590-01-P**

## OFFICE OF PERSONNEL MANAGEMENT

[OMB Control number 3206-0248]

**Submission for Review: Application for Senior Administrative Law Judge (OPM Form 1655), and Geographic Preference Statement for Senior Administrative Law Judge Applicant (OPM Form 1655-A)**

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** 30-Day Notice and request for comments.

**SUMMARY:** The Human Resources Solutions, U.S. Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an existing information collection request (ICR) 3206-0248, OPM 1655, and OPM 1655-A. These forms are used by retired Administrative Law Judges seeking



**AP1000 Design Certification Amendment – Final Rule (Excerpt)**  
**76 Fed. Reg. 82079, 82081 and 82102-3**





§ 424.21(c) of subchapter E, there shall appear on the label contiguous to the product name a statement to indicate the use of sodium alginate, calcium carbonate, lactic acid, and calcium lactate.

\* \* \* \* \*

■ 14. In § 381.133, revise paragraph (b)(9)(xviii) to read as follows:

**§ 381.133 Generically approved labeling.**

\* \* \* \* \*

(b) \* \* \*

(9) \* \* \*

(xviii) Changes reflecting a change in the quantity of an ingredient shown in the formula without a change in the order of predominance shown on the label, provided that the change in the quantity of ingredients complies with any minimum or maximum limits for the use of such ingredients prescribed in subpart P of this part and § 424.21(c) of subchapter E;

\* \* \* \* \*

Done in Washington, DC, on December 23, 2011.

Alfred V. Almanza,  
Administrator.

[FR Doc. 2011-33427 Filed 12-29-11; 8:45 am]

BILLING CODE 3410-DM-P

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 52

RIN 3150-A181

[NRC-2010-0131]

### AP1000 Design Certification Amendment

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC or Commission) is amending its regulations to certify an amendment to the AP1000 standard plant design. The amendment replaces the combined license (COL) information items and design acceptance criteria (DAC) with specific design information, addresses the effects of the impact of a large commercial aircraft, incorporates design improvements, and increases standardization of the design. This action is necessary so that applicants or licensees intending to construct and operate an AP1000 design may do so by referencing this regulation (AP1000 design certification rule (DCR)), and need not demonstrate in their applications the safety of the certified design as amended. The applicant for

this amendment to the AP1000 design is Westinghouse Electric Company, LLC (Westinghouse).

**DATES:** The effective date of this rule is December 30, 2011. The incorporation by reference of certain material specified in this regulation is approved by the Director of the Office of the Federal Register as of December 30, 2011. The applicability date of this rule for those entities who receive actual notice of this rule is the date of receipt of this rule.

**ADDRESSES:** You can access publicly available documents related to this action (see Section VI. Availability of Documents) using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-(800) 397-4209, (301) 415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

- *Federal Rulemaking Web site:* Public comments and supporting materials related to this final rule can be found at <http://www.regulations.gov> by searching on Docket ID NRC-2010-0131. Address questions and concerns regarding NRC dockets to Carol Gallagher; telephone at (301) 492-3668; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Ms. Serita Sanders, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone at (301) 415-2956; email: [serita.sanders@nrc.gov](mailto:serita.sanders@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background
- II. Summary of Analysis of Public Comments on the AP1000 Proposed Rule
  - A. Overview of Public Comments
  - B. Description of Key Structures of the AP1000 Design
  - C. Significant Public Comments and Overall NRC Responses
- III. Discussion
  - A. Technical Evaluation of Westinghouse Amendment to the AP1000 Design
  - B. Changes to Appendix D

- C. Immediate Effectiveness of Final Rule: Provision of Actual Notice to Southern Nuclear Operating Company
- IV. Section-by-Section Analysis
  - A. Scope and Contents (Section III)
  - B. Additional Requirements and Restrictions (Section IV)
  - C. Applicable Regulations (Section V)
  - D. Issue Resolution (Section VI)
  - E. Processes for Changes and Departures (Section VIII)
  - F. Records and Reporting (Section X)
- V. Agreement State Compatibility
- VI. Availability of Documents
- VII. Voluntary Consensus Standards
- VIII. Finding of No Significant Environmental Impact: Availability
- IX. Paperwork Reduction Act Statement
- X. Regulatory Analysis
- XI. Regulatory Flexibility Act Certification
- XII. Backfitting and Issue Finality
- XIII. Congressional Review Act

#### I. Background

Title 10 of the Code of Federal Regulations (10 CFR), Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," Subpart B, presents the process for obtaining standard design certifications. Section 52.63, "Finality of standard design certifications," provides criteria for determining when the Commission may amend the certification information for a previously certified standard design in response to a request for amendment from any person.

The NRC originally approved the AP1000 design certification in a final rule in 2006 (71 FR 4464; January 27, 2006). The final AP1000 DCR incorporates by reference Revision 15 of the design control document (DCD) (ADAMS Accession No. ML053460400), which describes the AP1000 certified design. During its initial certification of the AP1000 design, the NRC issued a final safety evaluation report (FSER) for the AP1000 as NUREG-1793, "Final Safety Evaluation Report Related to Certification of the AP1000 Standard Design," in September 2004 (ADAMS Accession No. ML043570339) and Supplement No. 1 to NUREG-1793 (ADAMS Accession No. ML053410203).

From March 2006 through May 2007, NuStart Energy Development, LLC (NuStart)<sup>1</sup> and Westinghouse provided the NRC with a number of technical reports (TRs) for pre-application review of a possible amendment to the approved AP1000 certified design, in order to: (1) close specific, generically applicable COL information items (information to be supplied by COL

<sup>1</sup> The NuStart member companies are: Constellation Generation Group, LLC, Duke Energy Corporation, EDF-International North America, Inc., Entergy Nuclear, Inc., Exelon Generation Company, LLC, Florida Power and Light Company, Progress Energy, and Southern Company Services, Inc.

Virgil C. Summer, Units 2 and 3 .....	Docket Nos. 05200027/8 .....	73 FR 45793.
William States Lee III, Units 1 and 2 .....	Docket Nos. 05200018/9 .....	73 FR 11156.

## II. Summary of Analysis of Public Comments on the AP1000 Proposed Rule

### A. Overview of Public Comments

The NRC published the proposed rule amending the AP1000 DCR in the **Federal Register** on February 24, 2011 (76 FR 10269). The public comment period for the proposed rule closed on May 10, 2011. The NRC received a large number of comment submissions for the proposed rule (AP1000 rulemaking) from members of the public, non-governmental organizations, and the nuclear industry. A comment submission means a communication or document submitted to the NRC by an individual or entity, with one or more distinct comments addressing a subject or an issue. A comment, on the other hand, refers to statements made in the submission addressing a subject or issue.

The NRC received more than 13,500 comment submissions, which appear to be variations of two letters with largely similar content. These comment submissions also contained approximately 100 separate comments. The NRC also received 66 additional comment submissions containing over 100 comments. Finally, the NRC received four “petitions” to suspend or terminate this rulemaking, which are being treated as public comments. The petitions set forth approximately 39 comments. As stated in the proposed rule, “Comments received after May 10, 2011 will be considered if it is practical to do so, but assurance of consideration of comments received after this date cannot be given.” The NRC determined that it was practical to consider comment submissions received on or before June 30, 2011. Five of the comment submissions were received after the 75-day comment period closed, and the NRC has addressed these late-filed comment submissions as part of this final rule (the numbers above reflect those late-filed comments, which were deemed practical to consider). These late comment submissions consisted of one petition, two submissions requesting the NRC to reconsider comments made during the initial AP1000 DC rulemaking, and two submissions with supplemental information to support suspending this rulemaking. The NRC also received several comment submissions after June 30, 2011. The NRC deemed that it was not practical to consider, in this

rulemaking, comments received after June 30, 2011 and, therefore, does not provide responses to those comments. The NRC has briefly reviewed them to ensure that they contain no health and safety matters.

There were several commenters in favor of completing the AP1000 rulemaking, while some were unconditionally opposed to completing the proposed amendment to the AP1000 design. The vast majority of commenters favored delaying (in some fashion) the AP1000 amendment rulemaking until lessons are learned from the Fukushima Daiichi Nuclear Power Plant (Fukushima) accident that occurred on March 11, 2011, and the NRC applies the lessons learned to U.S. nuclear power plants, including the AP1000 design.

Before responding to specific comments based upon the Fukushima Daiichi Nuclear Power Plant Event, the NRC is providing this discussion about the ongoing actions underway in response to this event. The Commission created a Near-Term Task Force (NTTF) to conduct an analysis of the lessons that can be learned from the event. The task force was established to conduct a systematic and methodical review of NRC processes and regulations to determine whether the NRC should make additional improvements to its regulatory system. The NTTF issued a report (ADAMS Accession No. ML111861807) evaluating currently available technical and operational information from the event, and presented a set of recommendations to the Commission. The task force concluded that continued operation and continued licensing activities do not pose an imminent risk to public health and safety. Among other recommendations, the NTTF supports completing the AP1000 design certification rulemaking activity without delay (see pages 71–72 of the report).

In an August 19, 2011, Staff Requirements Memoranda (SRM) (ADAMS Accession No. ML112310021), the Commission set forth actions related to the NTTF report together with a schedule for the conduct of those actions. Two of those actions have been completed and are documented in the following reports: “Recommended Actions to Be Taken Without Delay from the Near-Term Task Force Report,” September 9, 2011 (SECY–11–0124) (ADAMS Accession No. ML11245A127) and “Prioritization of Recommended

Actions To Be Taken In Response to Fukushima Lessons Learned,” October 3, 2011 (SECY–11–0137) (ADAMS Accession No. ML11269A204).

The NTTF recommendations relevant to the AP1000 design certification are limited to: Seismic and flooding protection (Recommendation 2); mitigation of prolonged station blackout (Recommendation 4); and enhanced instrumentation and makeup capability for spent fuel pools (Recommendation 7). The task force concluded that, by the nature of its passive design and inherent 72-hour coping capability, the AP1000 design has many of the features and attributes necessary to address the Task Force recommendations, and the NRC concludes that no changes to the AP1000 DCR are required at this time. Moreover, even if the Commission concludes at a later time that some additional action is needed for the AP1000, the NRC has ample opportunity and legal authority to modify the AP1000 DCR to implement NRC-required design changes, as well as to take any necessary action to ensure that holders of COLs referencing the AP1000 also make the necessary design changes.

The NRC organized the comments on the AP1000 amendment into the following subject areas: Fukushima-related, shield building, containment, severe accident mitigation design alternative (SAMDA), spent fuel, environmental, other AP1000 topics, and general concerns. Some comments opposed the AP1000 rulemaking until purported shield building flaws are corrected. Many comments opposed completing the AP1000 rulemaking for reasons outside the scope of this rulemaking. For example, many comments opposed the completion of the AP1000 rulemaking until there is resolution of high level radioactive waste storage issues.

Due to the large number of comments received and the length of the NRC responses provided, this section of the statement of considerations (SOC) for the final rule amending the AP1000 design certification only provides a summary of the categories of comments with a general description of the resolution of those comments. A detailed description of comments and the NRC’s response is contained in a comment response document, which is available electronically through ADAMS Accession No. ML113480018.

## Changes Addressing Compliance With Aircraft Impact Assessment Rule (10 CFR 50.150)

The final rule amends the existing AP1000 DCR, in part, to address the requirements of the AIA rule. The AIA rule itself mandated that a DCR be revised, if not during the DCR's current term, then no later than its renewal to address the requirements of the AIA rule. In addition, the AIA rule provided that any COL issued after the effective date of the final AIA rule must reference a DCR complying with the AIA rule, or itself demonstrate compliance with the AIA rule. The AIA rule may therefore be regarded as inconsistent with the finality provisions in 10 CFR 52.63(a) and Section VI of the AP1000 DCR. However, the NRC provided an administrative exemption from these finality requirements when the final AIA rule was issued (74 FR 28112; June 12, 2009). Accordingly, the NRC has already addressed the backfitting implications of applying the AIA rule to the AP1000 with respect to the AP1000 and referencing COL applicants.

## Conclusion

The amended AP1000 DCR does not constitute backfitting and is consistent with the finality provisions in 10 CFR part 52. Accordingly, the NRC has not prepared a backfit analysis or documented evaluation for this rule.

## XIII. Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

## List of Subjects in 10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Incorporation by reference, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 52.

## PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

■ 1. The authority citation for 10 CFR part 52 continues to read as follows:

**Authority:** Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005), secs. 147 and 149 of the Atomic Energy Act.

■ 2. In Appendix D to 10 CFR Part 52:

■ a. In Section III, revise paragraphs A and D;

■ b. In Section IV, revise paragraph A.3 and add paragraph A.4;

■ c. In Section V, redesignate paragraph A as paragraph A.1 and add a new paragraph A.2;

■ d. In Section VI, revise paragraphs B.1, B.2, B.7, and E;

■ e. In Section VIII, revise the introductory text of paragraph B.5.b, redesignate paragraphs B.5.d, B.5.e, and B.5.f as paragraphs B.5.e, B.5.f, and B.5.g, respectively, and add a new paragraph B.5.d, and revise paragraphs B.6.b and B.6.c; and

■ f. In Section X, revise paragraph A.1 and add a new paragraph A.4.

The revisions and additions read as follows:

## Appendix D to Part 52—Design Certification Rule for the AP1000 Design

\* \* \* \* \*

## III. Scope and Contents

A. Tier 1, Tier 2 (including the investment protection short-term availability controls in Section 16.3), and the generic TSs in the AP1000 Design Control Document, Revision 19, (Public Version) (AP1000 DCD), APP–GW–GL–702, dated June 13, 2011, are approved for incorporation by reference by the Director of the Office of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the generic DCD may be obtained from Stanley E. Ritterbusch, Manager, AP1000 Design Certification, Westinghouse Electric Company, 1000 Westinghouse Drive, Cranberry Township, Pennsylvania 16066, telephone (412) 374–3037. A copy of the generic DCD is also available for examination and copying at the NRC's PDR, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Copies are available for examination at the NRC Library, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852, telephone (301) 415–5610, email [LIBRARY.RESOURCE@NRC.GOV](mailto:LIBRARY.RESOURCE@NRC.GOV). The DCD can also be viewed online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html> by searching under ADAMS Accession No. ML11171A500. All approved

material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030 or go to <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

\* \* \* \* \*

D. 1. If there is a conflict between the generic DCD and either the application for the initial design certification of the AP1000 design or NUREG–1793, “Final Safety Evaluation Report Related to Certification of the Westinghouse Standard Design,” and Supplement No. 1, then the generic DCD controls.

2. If there is a conflict between the generic DCD and either the application for Amendment 1 to the design certification of the AP1000 design or NUREG–1793, “Final Safety Evaluation Report Related to Certification of the Westinghouse Standard Design,” Supplement No. 2, then the generic DCD controls.

\* \* \* \* \*

## IV. Additional Requirements and Restrictions

A. \* \* \*

3. Include, in the plant-specific DCD, the sensitive unclassified non-safeguards information (including proprietary information) and safeguards information referenced in the AP1000 DCD.

4. Include, as part of its application, a demonstration that an entity other than Westinghouse is qualified to supply the AP1000 design, unless Westinghouse supplies the design for the applicant's use.

\* \* \* \* \*

## V. Applicable Regulations

A. \* \* \*

2. The regulations that apply to those portions of the AP1000 design approved by Amendment 1 are in 10 CFR parts 20, 50, 73, and 100, codified as of December 30, 2011, that are applicable and technically relevant, as described in the Supplement No. 2 of the FSER (NUREG–1793).

\* \* \* \* \*

## VI. Issue Resolution

\* \* \* \* \*

B. \* \* \*

1. All nuclear safety issues, except for the generic TS and other operational requirements, associated with the information in the FSER and Supplement Nos. 1 and 2, Tier 1, Tier 2 (including referenced information, which the context indicates is intended as requirements, and the investment protection short-term availability controls in Section 16.3 of the DCD), and the rulemaking records for initial certification and Amendment 1 of the AP1000 design;

2. All nuclear safety and safeguards issues associated with the referenced sensitive unclassified non-safeguards information (including proprietary information) and safeguards information which, in context, are intended as requirements in the generic DCD for the AP1000 design;

\* \* \* \* \*

7. All environmental issues concerning severe accident mitigation design alternatives



**Issuance of Vogtle 3 & 4 COLs**  
**77 Fed. Reg. 12322-02**



Judith S. Sunley, Director, Division of Human Resource Management and PRB Executive Secretary.

Dated: February 21, 2012.

**Judith S. Sunley,**

*Director, Division of Human Resource Management.*

[FR Doc. 2012-4640 Filed 2-28-12; 8:45 am]

**BILLING CODE 7555-01-M**

## NEIGHBORHOOD REINVESTMENT CORPORATION

### Corporate Administration Committee Board of Directors; Sunshine Act Meeting

**TIME AND DATE:** 1 p.m., Thursday, March 8, 2012.

**PLACE:** 1325 G Street NW., Suite 800, Boardroom, Washington, DC 20005.

**STATUS:** Open.

#### CONTACT PERSON FOR MORE INFORMATION:

Erica Hall, Assistant Corporate Secretary, (202) 220-2376; [ehall@nw.org](mailto:ehall@nw.org).

#### AGENDA:

- I. Call to Order
- II. Executive Session
- III. Severance Policy
- IV. Board Committee Composition/ Elections/Appointments
- V. Washington, DC Lease Update
- VI. Human Resources Updates
- VII. Benefit Activities
- VIII. Strategic Planning Update
- IX. Adjournment

**Erica Hall,**

*Assistant Corporate Secretary.*

[FR Doc. 2012-4908 Filed 2-27-12; 11:15 am]

**BILLING CODE 7570-02-P**

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52-025 and 52-026; NRC-2008-0252]

### Vogtle Electric Generating Plant, Units 3 and 4; Issuance of Combined Licenses and Limited Work Authorizations and Record of Decision

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Issuance of Combined Licenses (NPF-91 and NPF-92) and Limited Work Authorization (LWA) (Nos. LWA-001 and LWA-002) and Record of Decision Issuance.

#### FOR FURTHER INFORMATION CONTACT:

Ravindra Joshi, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone:

301-415-6191; email: [ravindra.joshi@nrc.gov](mailto:ravindra.joshi@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

Pursuant to Title 10 of the Code of Federal Regulations (10 CFR) 2.106, the Nuclear Regulatory Commission (NRC) is providing notice of the issuance of Combined Licenses (COL), NPF-91 and NPF-92 and Limited Work Authorizations LWA-001 and LWA-002 to Southern Nuclear Operating Company (SNC), Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia, an incorporated municipality in the State of Georgia acting by and through its Board of Water, Light and Sinking Fund Commissioners. With respect to the application for COLs and for LWAs filed by SNC, on behalf of itself and the other four entities named above, the NRC finds that the applicable standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission regulations have been met. The NRC finds that any required notifications to other agencies or bodies have been duly made and that there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, as amended, the provisions of the Act, and the Commission regulations. Furthermore, the NRC finds that the licensees are technically and financially qualified to engage in the activities authorized, and that issuance of the license will not be inimical to the common defense and security or to the health and safety of the public. Finally, with respect to the LWAs, the NRC finds that there are no unresolved safety issues related to the activities that would constitute good cause for withholding the authorizations.

Accordingly, the COLs and LWAs were issued on February 10, 2012, and are effective immediately.

##### II. Further Information

The NRC has prepared a Final Safety Evaluation Report (FSER) and Final Supplemental Environmental Impact Statement (FSEIS) that document the information reviewed and NRC's conclusion. The Commission has also issued its Memorandum and Order documenting its final decision on the uncontested hearing held on September 27-28, 2011, which serves as the Record of Decision in this proceeding. In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," details with respect to this action, including the

FSER and accompanying documentation included in the combined license package, as well as the Commission's hearing decision, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, persons can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

- ML110450302 'Final Safety Evaluation Report for Combined Licenses for Vogtle Electric Generating Plant, Units 3 and 4'
- ML11076A010 NUREG-1947, 'Final Supplemental Environmental Impact Statement for Combined Licenses for Vogtle Electric Generating Plant, Units 3 and 4'
- ML11180A086 VEGP COL Application— Submittal 8 of the application
- ML12040A192 Commission's Memorandum and Order on the uncontested hearing (record of decision)
- ML112991101 Combined License No. NPF-91
- ML113060407 Combined License No. NPF-92
- ML113350133 Limited Work Authorization No. LWA-001
- ML113350143 Limited Work Authorization No. LWA-002

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room (PDR) Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The documents are also available at <http://www.nrc.gov/reactors/new-reactors/col.html>.

These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 13th day of February 2012.

**Mark Tonacci,**

*Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.*

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