

May 9, 2013

Mr. Russell Bell, Director
New Plant Licensing
Nuclear Generation Division
1201 F Street, Suite 1100
Washington, DC 20004

SUBJECT: CHANGES DURING CONSTRUCTION

Dear Mr. Bell:

I am responding to the Nuclear Energy Institute (NEI) letter received on November 1, 2012, on the subject of changes during construction as a consequence of nonconforming conditions identified during a new reactor construction project licensed under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 52 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML12307A448).

Background

As discussed during the public workshops conducted on February 12, 2013, March 11, 2013, and April 8, 2013 (meeting summaries at ADAMS Accession Nos. ML13044A044, ML13072A362, ML13100A007), the regulations at 10 CFR Part 50.59 and Section VIII.B.5.a of each 10 CFR Part 52 appendix, require the licensee to evaluate changes to and departures from the current licensing basis, to determine if prior U.S. Nuclear Regulatory Commission (NRC) approval is required. The approach to nonconforming conditions articulated in NEI's recent letter and developed further in revision 0D of NEI 96-07, Appendix C, *Guideline for Implementation of Change Control Processes for New Nuclear Power Plants Licensed Under 10 CFR Part 52*, Section 4.1.1.1, *Nonconforming Conditions during Construction*, proposes to conduct construction activities and licensee evaluation activities in parallel.

NEI has indicated in its November letter that some Part 52 licensees are concerned that the process for making emergent changes during construction under 10 CFR Part 52 is proving challenging and that a workable emergent change process is needed to avoid undue disruptions or delays during construction of these complex facilities.

Discussion

The NRC staff has reviewed the NEI proposal, and conducted public workshops to further our understanding of the industry's proposal on the change process for nonconforming conditions during construction. The staff is of the understanding that the industry-proposed process creates a distinction between the licensee entity and the design authority entity, and the responsibility for the determination of when prior NRC approval is required is broken into a two part process. The first part of an evaluation under 10 CFR 50.59 or Section VIII.B.5.a would determine if prior NRC approval was required by information type; i.e., a change to Tier 1, Tier 2*, or technical specifications. This partial evaluation would be "acknowledged" by the licensee. The second part of the evaluation, 10 CFR 50.59(c) or the 50.59-like criteria of Section VIII.B.5, would be completed while concurrently performing construction activities on the system, structure or component that is being remediated and would be authorized by the licensee.

The staff considers this two part process to be inconsistent with the requirements of 10 CFR 50.59 and Section VIII.B.5.a. The staff is of the view that when construction activities and evaluation activities are conducted in parallel, "prior NRC approval" becomes meaningless. NRC requirements necessitate that the licensee complete its determination of whether prior NRC approval is required before the change can be accepted as-is or before construction in accordance with the change can continue.

The staff supports an efficient nonconforming condition change process for determining when remediation activities require prior NRC approval. In the staff requirements memorandum for SECY-90-377, the Commission stated that although changes to the design reviewed and approved by the staff should be minimized, the Commission recognized that a certain amount of flexibility will be needed to finalize procurement information and to construct the facility (ADAMS Accession No. ML003781628).

To that end, the staff has no objection to a process similar to screening under 10 CFR 50.59 for making changes to Tier 2 information. During the public workshops discussed above, the staff clarified the flexibility available with the Section VIII change processes, through the simplification of the Section VIII.B.5.b evaluation, to replicate the 10 CFR 50.59 screening process that is employed by the current operating fleet. The staff identified comparable 10 CFR 50.59 and 50.59-like (Section VIII.B.5.b) evaluation processes which provide additional regulatory flexibility using the current regulations in Section VIII "Processes for Changes and Departures." This flexibility may allow a licensee that is resolving a nonconformance during construction

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activities to arrive at a timely determination on whether the plant change requires prior NRC approval. Follow-on consultations with consortium partners may identify alternate solutions, and if the licensee chooses to employ such a solution, the licensee would then evaluate the change to determine if prior NRC approval is required.

Please feel free to call me, Michael E. Mayfield, (301) 415-0561 or via e-mail at Michael.Mayfield@nrc.gov or Earl R. Libby, (301) 415-0522 or via e-mail at Earl.Libby@nrc.gov if you have any questions.

Sincerely,

/RA/

Michael E. Mayfield, Director
Division of Advanced Reactors and Rulemaking
Office of New Reactors

Project No.: 689

cc w/encl: NEI New Reactors Mailing List

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***via email**

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(Revised 04/22/2013)

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