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Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

Comment On: NRC-2016-0207-0001

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations; Biweekly Notice

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Comment on FR Doc # 2016-24321

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RULES AND DIRECTIVES

General Comment

See attached file(s)

Attachments

Comments on LAR 16-015

SUNSI Review Complete

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E-RIDS= ADM -03

Add= K. Gredstein (CKE)

Docket ID NRC-2016-0207

Southern Nuclear Operating Company, INC. (SNC), Docket Nos. 52-025 and 52-026, Vogtle Electric Generating Plant (VEGP) Units 3 and 4.

In a letter dated July 29, 2016, SNC submitted a License Amendment Request (LAR) (ADAMS Accession number-ML16211A436). The LAR requests to add to License Condition 2.D.(1) of the VEGP Units 3 and 4 combined license an Interim Amendment Request (IAR) process for changes during construction when emergent conditions are present.

The NRC published a notice of this amendment request in Federal Register on October 11, 2016 (81 FR 70184-70185) for comments.

The comments on this proposed amendment are provided below.

A. General Comments and Observations:

- This proposal appears to be a redo of the Nuclear Energy Institute (NEI) argument from the changes during construction, Interim Staff Guidance (ISG) (this proposal goes beyond ISG-25). (This change was presented by NEI during a revision to a NEI guidance document related to Part 52 change process and that change was similar to the one requested in this LAR and was rejected by the NRC Staff (Mid-2014)).
- This proposal goes beyond current regulation (Current change process including use of Interim staff guidance, iSG-25) and represents a new policy and if approved will circumvent the current/existing regulations (Part 52 change process). This is similar to the licensee's previous attempt related to wholesale downgrading Tier 2* to Tire 2 under the licensee control.

B. Specific Comments:

B.1 Cover Letter:

Second Paragraph states in part, "As the First Part 52 licensee, SNC has identified an approach to alleviate some of the administrative burdens for both the NRC and the Licensee for certain changes during construction when emergent conditions are present."

Comment:

The licensee did not provide any specific examples where so called NRC's administrative burden will be reduced. On the contrary, the staff's review time will be increased. If this amendment is approved, the staff has to review the IAR, issue the No-

Objection Letter. Then the licensee will submit the LAR and/ or PAR. Then the Staff has to accept the LAR before it can issue the No-Objection letter for the PAR. Thus the burden on the staff will be increased and not decreased:

By the way the NRC has always completed its review of a PAR to support the continue construction and issued a no-objection letter to the licensee so that it does not impact construction activities (Look at history of No-objection letters issued since issuance of the COL). In addition, the LARs related the PARs were approved by the NRC to support the construction activities. In some case, even though the LARs were approved, the licensee was not able to continue the construction because of its own problems related to design or licensing basis issues.

B.2 Enclosure 1, Summary of description:

There is a reference to '**Emergent Condition**' in relation to the IAR.

Comment:

However, the licensee has not provided any specific examples. Also, the licensee did not provide any specific difference between the emergent conditions described in ISG-25 verses in this proposal. In one of the Public Meeting, at the request of the NRC Staff, the licensee provided three examples of 'so called emergent conditions' from the past LARs (VCS LAR 15-20, SNC LAR 13-003, and SNC LAR 12-008). Those LARs cannot be considered as emergent conditions during construction. See below for explanation.

Examples of the LARs

LAR 13-003 (ML12269A433) was submitted on January 15, 2013 with a requested date for approval of March 1, 2013. The NRC issued the license amendment on February 26, 2013 (less than 42 days). The information from the AP600 DCD to the AP1000 DCD was incorrectly transfer and that created issues and therefore the licensee require to apply for the license amendment. This example does not represent any emergent condition during construction.

LAR 12-008 (ML12269A433) was submitted on September 21, 2012 with a requested date of approval 6 months after the no-objection letter (January 3, 2013). Based on discussion with the licensee at that time, the licensee was not in hurry to get this request approved quickly. This is because, the request involved inconsistencies between Tier 1 Table and Tier 2 information. The amendment was issued on May 6, 2013. This example does not represent any emergent condition during construction.

B.3 Detailed Description Page 4 of 11 of Enclosure 1

It states in part that the Nuclear Construction Safety Assessment (NCSA) would evaluate whether the proposed change would result in **any material decrease in safety** (10 CFR 52, Appendix D, Section VIII.B.5.b, VIII.B.5.c, VIII.B.5.d, and 10 CFR 50.59(c)) And then, it lists the criteria for determination of NCSA.

Comment:

The criteria listed above do not evaluate safety of the proposed change or the modification. These criteria are screening criteria to determine whether the licensee can implement the change prior to NRC approval or not. (See either 10 CFR 50.59 or 10 CFR 52, Appendix D)

After determining that a proposed activity is safe and effective through appropriate engineering and technical evaluations, the 10 CFR Part 52 change processes are applied to determine if a license amendment and/or exemption is required prior to implementation (see **Section 1.3, (page C-4, 10 CFR PART 52 CHANGE PROCESS OVERVIEW**, Nuclear Energy Institute, NEI 96-07, Appendix C Revision 0 - Corrected "Implementation of Change Processes for New Nuclear Power Plants Licensed Under 10 CFR Part 52," March 2014 ADAMS Accession No. ML14091A739)

B.4 Detailed Description Page 4 of 11 of Enclosure 1

In third paragraph, it states in part, " 4) evaluate whether continued construction would make the non-confirming conditions irreversible."

Comment:

The licensee has failed to describe or define the term 'irreversible' conditions. Is it similar to the ones described in ISG-25?

B.5 Detailed Description Page 5 of 11 of Enclosure 1

It states in part, "The Interim Amendment Request process is not intended to supplant the current LAR/PAR process."

Comment:

It is adding a new process that is beyond current regulatory process (Change process beyond current regulation and beyond the COL (Use of ISG-25)) and this proposal represents a new policy and if approved will circumvent the current /existing regulation (part 52 change process.).

B.6 Technical Evaluation of Enclosure 1 of the LAR (Page 6 of 11)

It states in part, "Rather, SNC proposes a process change, whereby SNC may seek a determination from the NRC that it has no objection to SNC continuing construction in emergent situations when certain criteria are met prior to submittal of a LAR/PAR pursuant to COL-ISG-025 or a LAR. Prior to any construction continuing under an Interim Amendment Request No-Objection letter, SNC must submit a NCSA determination, concluding that the proposed change will not result in any material decrease in safety and that continued construction would not make a non-conforming condition irreversible. The proposed change will be evaluated further subject to the review requirements for a LAR/PAR pursuant to COL-ISG-025 or a LAR. If the related LAR is subsequently denied, SNC would be required to return the plant to its current licensing basis."

Comment:

If the licensee continues its construction while NRC is reviewing the Licensee's IAR, the licensee will be in violation of its COL (Construction is not consistent with licensing basis). I think this situation is not good at all.

If the licensee waits for NRC No-objection letter for the IRA before the licensee continues the construction, then the licensee is not gaining any time (for construction). In addition, the licensee will taking a good of amount of time to prepare the IAR (which is not really different that preparing the actual LAR)

B.7 Section 4.2, Precedent, Page 7 of 11

Top of the Page, the licensee states in part, "NRC's review of a PAR/LAR under COL-ISG-025 includes a review of the PAR's no significant hazards consideration determination, categorical exclusion from environmental review, and----."

Comment:

The reference to a review of No-SHC and Environmental review by the NRC for a PAR is inaccurate statement. According to ISG-25, the staff's review of the PAR consists of Oath or affirmation, Date by which a PAR determination requested, Description of the proposed change and description of the impact of an associated ITAAC (if any). (See ISG-25 ML15058A377, July 2015, page 5 of 9). The review of NO-SHC determination and categorical exclusion from environmental review is performed during the acceptance review of the LAR and then in detailed review of the LAR.

B.8 Proposed License Condition, Item (f) on Page 3 of 4 of Enclosure 2:

It states in part, "NRC will issue an IAR notification stating whether the NRC has any objection..."

Comment:

Since the Plant is not operating but it is under construction, the licensee cannot apply or use the provisions of 10 CFR 50.91(a)(5) for emergency situation. Instead, the licensee is trying to establish an approach similar to a "Notice of Enforcement Discretion (NOED)". The approach in this LAR goes beyond the change process per 10 CFR Part 52, Appendix D (or 10 CFR 52.98) change process and will circumvent the existing regulation and the Commission Policy.

In addition,

License conditions should:

- address issues of high safety or regulatory significance;
- be worded such that **the meaning is clear and not open to different interpretations**; and
- Explicitly define the conditions for satisfaction of the condition.

License conditions should not:

- address issues already addressed by **an existing rule, requirement, order or regulation**;
- **require NRC action to complete**;
- be open-ended;
- address a facility not controlled by the license; nor,
- address voluntary requests.

(The NRC Staff guidance document, LIC 101, Section 4.4, License Condition, page 20)(Also refer to VEGP 3 and 4 COL, there are no license conditions in the COL that require any NRC review or actions other than verification by Inspection activities)

The proposed License condition does not meet any of these items specifically the highlighted once. Therefore, the NRC Staff should not approve the proposed license condition.

B.9 Enclosure 2, Proposed License Condition, Item (d) 3.

It states that a NO-Significant Hazards Consideration (SHC) determination will be included.

Comment:

In order to prepare a NO-SHC determination, the licensee has to complete the safety assessment/evaluation of the change. I do not understand how the licensee can write a NO-SHC where a final safety evaluation is not complete (as part of the IAR). If the safety evaluation is complete, then why the licensee is submitting the IAR, instead it can submit the actual LAR and followed by a PAR.

Further information regarding NSHC determinations can be found in the *Federal Register* publication of a final rule dated March 6, 1986 (51 FR 7744). This rulemaking is sometimes referred to as the "Sholly rule." The NSHC standard is a procedural criterion that governs whether an opportunity for a prior hearing must be provided before action is taken by the NRC (i.e., issuance of amendment), and whether prior notice for public comment may be dispensed with in emergency situations or shortened in exigent circumstances sense (See RIS 2001-22)

U.S. Nuclear Regulatory Commission, "NRC Regulatory Issue Summary 2001-022 Attributes of a Proposed No Significant Hazards Consideration Determination," RIS 2001-022, November 20, 2001, ADAMS Accession No. ML011860215

Even if the licensee submits No-SHC determination with the IAR, when and how will the public participate (opportunity for commenting on-'Sholly rule') in the IAR process? Or opportunity for a public hearing?

Summary/Conclusions:

This proposal represents a new policy and circumvents the current/existing regulations (Part 52 change process) and actually goes beyond the current regulations. Only the Commission has the authority to create a new policy and the Commission has not delegated its authority to the NRC staff in this case. And therefore the NRC should not approve this LAR. Rather the NRC should ask/encourage the licensee to use the current change policy/regulations including ISG-25. This is because the current process has worked very well and there are no instances or situations that stopped the construction activities due to NRC's ability to approve the LARs or provide the necessary no-objection letters for the PARs.