



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 28, 2018

Mr. Michael D. Tschiltz, Senior Director
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Nuclear Energy Institute
1201 F Street, NW, Suite 1100
Washington, DC 20004

SUBJECT: SUPPLEMENTAL RESPONSE RELATED TO THE NUCLEAR ENERGY
INSTITUTE'S LETTER, "AVOIDING DELAYS IN ISSUANCE OF NRC COMBINED
LICENSES DUE TO DESIGN CERTIFICATION ERRORS" DATED AUGUST 4,
2017

Dear Mr. Tschiltz:

The U.S. Nuclear Regulatory Commission (NRC) is providing a supplemental response to your letter (Agencywide Documents Access and Management System (ADAMS) Accession No. ML17236A489) dated August 4, 2017. The NRC provided an initial response on October 31, 2017 (ADAMS Accession No. ML17291A793) which referenced a planned public meeting to discuss several options proposed by the Nuclear Energy Institute (NEI) related to avoiding delays in the issuance of combined licenses (COLs) due to design certification (DC) errors. The NRC staff reviewed the proposals and conducted a public meeting on December 13, 2017, which was summarized on January 25, 2018 (ADAMS Accession No. ML18011A037).

Both NRC and NEI acknowledged during the public meeting the substantive interchange on NEI's proposed approaches and additional potential approaches. A key recommendation from that meeting was that NEI prepare examples of the potential application of their proposed approaches to either past challenges or hypothetical situations in order to support additional efforts. Examples are important to further develop options and to evaluate implementation challenges of any option that is to move forward. The NRC staff recommends that examples also be applied to any new proposed approaches that NEI would like to pursue further. If any new approach involves a potential rulemaking, the agency would follow its established processes in determining priority and in soliciting broader stakeholder input.

The NRC staff has agreed to meet with NEI once NEI has developed examples. Until a discussion of examples occurs, NRC will not be in a position to determine whether any option can be eliminated, although the NRC is providing some initial feedback on the options in the next paragraphs.

The NRC staff has planned a subsequent public meeting on March 28, 2018, in which NEI will present examples of NEI's first proposed option involving a license condition using past challenges related to the AP1000 DC found in Title 10 *Code of Federal Regulations* (10 CFR)

Part 52, "Licenses, Certifications, And Approvals For Nuclear Power Plants," Appendix D, "Design Certification Rule for the AP1000 Design." Examples for this option should meet the "ministerial act" standard from Commission case law, where sufficient information is provided to support a safety finding at COL issuance without the need for a post-COL license amendment or similar NRC approval. For NEI's first proposed option, and for NEI's second proposed option to use inspections, tests, analyses, and acceptance criteria (ITAAC), examples should include discussion of any changes or additions needed to the final safety analysis report or Tier 2 of the design control document.

The NEI's third proposal involves a hybrid approach that would combine both a construction permit (CP) and a COL. The NRC staff has determined that NEI's proposed option is not consistent with current NRC regulations for issuance of COLs, which require a final safety finding on all matters material to licensing as defined by 10 CFR Part 52, Subpart C (e.g., 10 CFR 52.79(a), 52.97(a)). Since a final safety finding is also required under Section 185b. of the Atomic Energy Act of 1954, as amended (AEA), the NRC staff has determined that without a final safety finding, a license authorizing construction of a commercial nuclear reactor would have to be issued under Section 185a. of the AEA.

Any NEI correspondence received regarding this topic would not require a fee exemption request because it would be considered a continuation of an established dialogue that assists NRC in generic regulatory improvement efforts.

If you have any questions, please contact Barbara Hayes at (301) 415-7442 or via e-mail Barbara.Hayes@nrc.gov.

Sincerely,

/RA/

Francis M. Akstulewicz, Director
Division of New Reactor Licensing
Office of New Reactors

cc: NEI New Reactors Mailing List

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(Revised 05/08/2017)

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