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Dr. Dennis M. Crutchfield
U.S. Nuclear Regulatory Commission
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One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

Docket No: STN 52-005

- Refs:
1. Letter dated March 9, 1995, from Philip Campbell (AECLT) to NRC
 2. Letter dated March 16, 1995, from Dennis M. Crutchfield (NRC) to Phil Campbell (AECLT)
 3. Letter dated December 15, 1994, from Dennis M. Crutchfield (NRC) to A. D. Hink (AECLT)

Dear Sir:

In Reference 1, AECL Technologies Inc. (AECLT) requested NRC to discontinue its design certification review effort for the CANDU 3U but to keep the docket open. In Reference 2, NRC agreed to discontinue all CANDU 3U design certification review efforts per AECLT's request. However, Reference 2 also stated that NRC had "never accepted" AECLT's design certification application for the CANDU 3U for review, and did not docket the application. Reference 2 also states that if AECLT were to renew its program with the NRC in the future, the NRC may undertake a new acceptance review and probably issue a new docket number.

NRC's statement that it did not accept the CANDU 3U application for review and did not docket the application is inconsistent with contemporaneous statements by the NRC, and is also inconsistent with the significance of contemporaneous NRC actions as provided in NRC regulations and guidance. Specifically:

- In Reference 3, NRC assigned a docket number for the application for the CANDU 3U and provided a notice of receipt of application for design certification that was published in the Federal Register. As provided in 10 CFR § 2.101 (which is applicable to an application for design certification under 10 CFR §§ 52.48, 52.45 (d), 50.30(a)(6)), an application for a production or utilization facility is treated as a "tendered application" and a docket number is not assigned and a Federal Register notice is not published unless the NRC determines that the tendered application is complete and acceptable for docketing. Thus, the fact that the NRC has issued a docket number and a Federal Register notice of the

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application for the CANDU 3U is conclusive evidence under Section 2.101 that the application has been docketed.

- As stated in NUREG/BR-0073, "Project Manager's Handbook," Section 2.4.1, if an application is not accepted for docketing, a letter must be sent to the applicant notifying it of the rejection of the application. NRC never notified AECLT that its application for the CANDU 3U was rejected. To the contrary, Reference 3 indicates that the NRC had completed its acceptance review of the application for design certification of the CANDU 3U, that the NRC could proceed with its technical review of the application, and that the application would be assigned a docket number. This indicates that the application was docketed.
- In a number of documents, NRC has indicated that it had completed its acceptance review of the application for design certification of the CANDU 3U and was in the process of performing its technical review. See, e.g., "Annual Report [to Congress] on Progress in Certified Standardized Advanced Light-Water Reactor Design, 1995," attached to letters dated February 17, 1995, from Kenneth C. Rogers (NRC) - to Senator Peter V. Domenici and Congressman John T. Myers; letter dated February 24, 1995, from Kenneth C. Rogers (NRC) - to Senator Mark O. Hatfield. Because the technical review occurs "subsequent to acceptance of the application" (NUREG/BR-0073), it is clear that the application for the CANDU 3U has been accepted for docketing.

In summary, NRC's regulations, NRC guidance, and contemporaneous NRC statements conclusively demonstrate that AECLT's application for the CANDU 3U was accepted for technical review and was docketed. It is now inappropriate for NRC, after the fact, to treat the application as if it had not been accepted and docketed.

Accordingly, AECLT requests that the NRC retract the statements in Reference 2 that the application for the CANDU 3U had not been accepted and docketed. If NRC does not retract these statements, AECLT requests that:

- 1) NRC not bill AECLT for any NRC activities occurring after December 15, 1994, when the NRC assigned a docket number for and commenced its technical review of the application for the CANDU 3U. It would be inappropriate for NRC to bill AECLT for activities associated with the technical review of the application for the CANDU 3U if the application was not docketed, because NRC was not authorized to perform technical review activities until the application was docketed.

Dennis M. Crutchfield
April 27, 1995
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- 2) NRC not bill AECLT for NRC's acceptance review activities. It was inappropriate for NRC to submit a bill for its completed acceptance review, and then not either docket the application or issue a rejection letter. In short, AECLT did not receive the product for which NRC is charging.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Philip Campbell', with a long horizontal stroke extending to the right.

Philip Campbell
President
AECL Technologies

cc: Document Control Desk
I. Selin
E. G. de Planque
K. C. Rogers
W. T. Russell
J. M. Taylor