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August 3, 1995

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Mr. John Hoyle, Secretary
Office of the Secretary
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

DOCKET NUMBER **PR 52**
PROPOSED RULE
(60FR17924)

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Attention: Docketing and Servicing Branch

Subject: Proposed Rule: Standard Design Certification for the System 80+™ Advanced
Pressurized Water Reactor (60 Fed. Reg. 17925, April 7, 1995)

Dear Mr. Hoyle:

Duke Engineering & Services, Inc. is a wholly-owned affiliate of Duke Power Company. We have participated extensively in various aspects of the System 80+™ design and licensing effort. As such, we are intimately familiar with the issues associated with the Design Certification process and the NRC Staff reviews of System 80+™. The advanced System 80+™ design will be of significant interest to electric power suppliers in the future. As such, the NRC's issuance last summer of the Final Design Approval (FDA) for System 80+™ was a significant milestone for the U.S. nuclear industry.

The NRC is to be commended for achieving a very significant milestone in the next generation of US reactor design by issuing its Notice of Proposed Rulemaking (NPR) on design certification of System 80+™. The future of nuclear energy as a viable supplier of this nation's energy needs in the 21st century is highly dependent on the successful culmination of this pioneering certification rulemaking.

It is extremely important that the design certification rule fulfill the mandates of the Energy Policy Act of 1992, the NRC's own goals when it issued 10 CFR Part 52 in 1989, and the industry goals that have been espoused in the NPOC Strategic Plan. Although good progress has been made, as evidenced by commencement of the design certification rulemaking proceedings for System 80+™, there are grave concerns with various substantive and legal aspects of the proposed rule. These aspects are discussed in detail in the comments on the NPR that were submitted to NRC by the Nuclear Energy Institute (NEI), as well as those submitted by ABB-CE. Therefore, we are writing to express our strong affirmation of the NEI and ABB-CE comments.

Of particular concern is the loss of finality that will occur in the designs if the proposed rule is not changed. For example, safety information that has been approved by NRC and subject to litigation in the certification rulemaking should not be subject to re-review in COL proceedings. All issues that were actually resolved by NRC in the certification process should be treated as legally resolved for

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all future proceedings. Changes made pursuant to the 50.59-like process and exemptions should not lose finality. Nor should future NRC proceedings be open to contentions involving superfluous design issues not previously addressed.

Another concern is the new "applicable regulations" proposed by the NOPR. In our view, these additional "applicable regulations" are unnecessary and inappropriate for the reasons well expressed in more detail in the NEI and ABB-CE comments. Because the certification is itself a rule, there is no legal or technical need or justification. Moreover, these "applicable regulations" could be used to impose unwarranted backfits. Design features included in the design to provide enhanced safety should not be subject to the potential for later backfits and challenges based on non-compliance with what are exceptionally broad and vague requirements applied after the fact. If adopted, they present an unacceptable element of risk in the licensing process for advanced designs. Thus, we are adamantly opposed to their adoption in this rulemaking.

Significant concerns also apply to provisions of the proposed rule regarding ITAAC. The proposed rule does not provide potential licensee's with adequate certainty of a workable ITAAC implementation process under Part 52. We strongly endorse the NEI recommendations that the Commission clarify the characteristics of the NRC verification of licensee ITAAC determinations and clearly specify the basis for determining compliance with ITAAC.

The proposed rule would also unreasonably require adherence to ITAAC under Part 50. ITAAC are unique to Part 52 and unnecessary to Part 50. Imposing such a requirement would make it extremely undesirable to utilize two-step licensing process of 10 CFR Part 50. It is unlikely that any potential licensee would consider it a viable option.

We also share the other concerns expressed by the NEI and ABB-CE in their comments on the NOPR. In our view, whether the System 80+™ Standard Plant certified design is ever referenced by U.S. electric power suppliers depends largely on how the Commission resolves those comments. Accordingly, please review these comments carefully and take the measures necessary to rectify the proposed design certification rule to assure the goals of the Congress, the NRC and the nuclear industry will be achievable. The future viability of the U.S. nuclear option depends on taking responsible action to rectify the identified problems.

Sincerely,



Richard W. Bonsall
Vice President, Advanced Nuclear Programs

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cc: T.D. Crom
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