August 6, 1995

COMMENTS OF OHIO CITIZENS FOR RESPONSIBLE ENERGY, INC. ("OCRE") ON PROPOSED RULES: STANDARD DESIGN CERTIFICATION FOR THE U.S. ADVANCED BOILING WATER REACTOR DESIGN (60 FR 17902) AND STANDARD DESIGN CERTIFICATION FOR THE SYSTEM 80+ DESIGN (60 FR 17924), APRIL 7, 1995

In these comments OCRE is only addressing the questions posed in Section IV. SPECIFIC REQUESTS FOR COMMENTS, set forth in both proposed rules.

Q1. Should the requirements of 10 CFR 52.63(c) be added to a new 10 CFR 52.79(e)? (Refer to discussion in III.A.)

A. OCRE agrees that the requirements of 10 CFR 52.63(c) should be added to a new 10 CFR 52.79(e), as this section is applicable to the COL applicant.

Q2. Are there other words or phrases that should be defined in Section 2 of the proposed rule? (Refer to discussion in III.B.)

A. OCRE is not aware of any needed additions to the definitions.

Q3. What change process should apply to design-related information developed by a COL applicant or holder that references this design certification rule? (Refer to discussion in III.D.)

A. OCRE believes that the change process for design-related information developed by a COL applicant or holder should be that set forth in Section 8(b)(5)(i) of the proposed rule for Tier 2 information. It is essential that any design-related information (and changes thereto) developed by the COL applicant or holder not have issue preclusion and be subject to litigation in any COL hearing. This should include the plant-specific PRA and updates which are to be required by the future generic rulemaking and which will supersede the design-specific PRA.

Q4. Are each of the applicable regulations set forth in Section 5(c) of the proposed rule justified? (Refer to discussion in III.E.)

A. OCRE finds each of the applicable regulations set forth in Section 5(c) of both proposed rules to be justified. These requirements are responsive to issues arising from operating experience and will greatly reduce the risk of severe accidents for plants using these standard designs.

Q5. Section 8(b)(5)(i) authorizes an applicant or licensee who references the design certification to depart from Tier 2 information without prior NRC approval if the applicant or licensee makes a determination that the change does not involve a change to Tier 1 or Tier 2* information, as identified in the DCD, the technical specifications, or an unreviewed safety question as defined in Sections 8(b)(5)(ii) and (iii). Where Section 8(b)(5)(i) states that a change made pursuant to that paragraph will no longer be considered as a matter resolved in connection with the issuance or renewal of a design certification within the meaning of 10 CFR 52.63(a)(4), should this mean that the determination may be challenged as not demonstrating that the change may

be made without prior NRC approval or that the change itself may be challenged as not complying with the Commission's requirements? (Refer to discussion in III.H.)

A. OCRE believes that such changes should be open to challenge in both respects. However, OCRE believes that it is the latter, substantive respect which is most important. Simply being able to challenge the determination, without being able to challenge the change itself, does not, in OCRE's view, constitute meaningful public participation.

Q6. How should the determinations made by an applicant or licensee that changes may be made under Section 8(b)(5)(i) without prior NRC approval be made available to the public in order for those determinations to be challenged or for the changes themselves to be challenged? (Refer to discussion in III.H.)

A. For the COL applicant, the determinations and descriptions of the changes should be set forth in the COL application. A COL holder who makes such changes should be required to submit the determination and description of the changes to the NRC, so that they will be placed into the Public Document Room, and to send this material to the parties in the COL proceeding. Any person who wishes to challenge the determinations or changes should file a petition pursuant to 10 CFR 2.206.

Q7. What is the preferred regulatory process (including opportunities for public participation) for NRC review of proposed changes to Tier 2* information and the commenter's basis for recommending a particular process? (Refer to discussion in III.H.)

A. Proposed changes to Tier 2* information should require either an amendment to the license application or an amendment to the license, with the requisite hearing rights. Changes which are important enough to require NRC approval are important enough to require a license amendment with 189a hearing rights. In fact, the court in Sholly v. NRC, 651 F.2d 780, 791 (D.C. Cir. 1980), vacated on other grounds, 459 U.S. 1194 (1983), found that an action which grants a licensee the authority to do something it otherwise could not have done under the existing license authority is a license amendment within the meaning of the Atomic Energy Act. The First Circuit Court of Appeals recently reached the same conclusion. Citizens Awareness Network v. NRC, No. 94-1562, July 20, 1995.

Q8. Should determinations of whether proposed changes to severe accident issues constitute an unreviewed safety question use different criteria than for other safety issues resolved in the design certification review and, if so, what should those criteria be? (Refer to discussion in III.H.)

A. OCRE supports the concept behind the criteria in Section 8(b)(5)(iii), but would suggest the following language for the criteria:

(A) There is a substantial increase in the probability of a particular severe accident previously reviewed;

(B) A possibility for a severe accident of a different type than any reviewed previously in the DCD may be created; or

(C) There is a substantial increase in the consequences to the public of a particular severe accident previously reviewed.

OCRE's proposed language would delete the clause about a severe accident becoming "credible" and would add a new criterion regarding the creation of a different type of severe accident. The word "credible" is very subjective and, to the best of OCRE's knowledge, has never been defined by the NRC. It is best to avoid the use of such subjective terms.

Q9(a)(1) Should construction permit applicants under 10 CFR Part 50 be allowed to reference design certification rules to satisfy the relevant requirements of 10 CFR Part 50? (Refer to discussion in III.J.)

A. Part 52 clearly contemplates that CP applicants may reference certified standard designs.

Q(2) What, if any, issue preclusion exists in a subsequent operating license stage and NRC enforcement, after the Commission authorizes a construction permit applicant to reference a design certification rule?

A. In the operating license stage, to the extent that a contention challenges the design certification rule, such challenge would be prohibited under 10 CFR 2.758. NRC enforcement would also have to be consistent with the certification rule and with 10 CFR 52.63.

Q(3) Should construction permit applicants referencing a design certification rule be either permitted or required to reference the ITAAC? If so, what are the legal consequences, in terms of the scope of NRC review and approval and the scope of admissible contentions, at the subsequent operating license proceeding?

A. Since the ITAAC are Tier 1, a CP applicant must reference them. The scope of the OL hearing, with respect to design issues, would probably be limited to issues of compliance with the ITAAC.

Q(4) What would distinguish the "old" 10 CFR Part 50 2-step process from the 10 CFR Part 52 combined license process if a construction permit applicant is permitted to reference a design certification rule and the final design and ITAAC are given full issue preclusion in the operating license proceeding? To the extent this circumstance approximates a combined license, without being one, is it inconsistent with Section 189(b) of the Atomic Energy Act (added by the Energy Policy Act of 1992) providing specifically for combined licenses?

A. While this circumstance would approximate a combined license, the specific provisions of 10 CFR 52.103 would not be employed: e.g., the timing, granting or denial of the hearing request by the Commission, operation during an interim period, the Commission's determination of the appropriate hearing procedures. Thus, it would not actually be a combined license. In the OL proceeding the intervenors would have the right to a formal evidentiary hearing before a Licensing Board, even if the scope of the issues might be limited.

Q9(b)(1) Should operating license applicants under 10 CFR Part 50 be allowed to reference design certification rules to satisfy the relevant requirements of 10 CFR Part 50? (Refer to discussion in III.J.)

Q(2) What should be the legal consequences, from the standpoints of issue resolution in the operating license proceeding, NRC enforcement and licensee operation if a design certification rule is referenced by an applicant for an operating license under 10 CFR Part 50?

A. An OL applicant should not be allowed to reference a design certification rule if that rule was not referenced in the CP. It would make no sense to allow otherwise.

Q(c) Is it necessary to resolve these issues as part of this design certification, or may resolution of these issues be deferred without adverse consequence (e.g., without foreclosing alternatives for future resolution).

A. OCRE believes that it is extremely unlikely that an applicant referencing a certified standard design will opt to use the "old" two-stage licensing process instead of the COL process. There is no advantage to doing so. Why would an applicant choose to file two applications and have two hearings? Since the circumstances envisioned in this series of questions is not likely to be faced, OCRE believes that these issues may be deferred without adverse consequences.

In conclusion, OCRE supports the policy and procedural aspects of these two proposed rules and is pleased that the NRC has incorporated OCRE's previous comments into the rules.

Respectfully submitted,

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