

at a new facility without substantial change, and concomitant need for NRC review and approval of those changes.

With respect to operational QA, the NRC would need to review the existing operational QA program to assure the licensee's commitments in the QA program area are applicable to the proposed facility. The adequacy of QA program elements depends upon facility design, fabrication and construction technologies, and how systems, structures, and components (SSCs) and services are procured. For example, modular construction, in which portions of the plant are prefabricated off site, transported to the site, and integrated into the portions of the plant constructed on site, will likely involve different QA programs, procedures, and considerations than those for (current generation) plants constructed entirely on site. Another example is the use of SSCs which are procured from sources outside the United States. These components may be manufactured, tested, and qualified to different standards than the standards of the COL applicant's construction QA program. While there may not be the need to make substantial changes to an operational QA program at an existing plant, the Commission believes that an operational QA program could not be used with some changes or supplementation. Those changes or supplementation would need to be reviewed and approved by the NRC.

Based upon the review of these three areas, the NRC does not believe that it is technically possible to apply programs such as physical protection, emergency preparedness, and QA from another facility to a proposed COL without evaluation and consideration of the acceptability of the information with respect to the specific characteristics and location of the proposed facility.

The NRC also believes that the petitioner's proposal would essentially extend the Backfit Rule to situations for which the policies underlying the Backfit Rule are not applicable. A COL applicant simply can have no reasonable regulatory expectation that the NRC's determination of whether the application complies with applicable regulatory standards would be constrained by the "current licensing basis" for a previously licensed facility at that site. This is even more true for a COL applicant referencing a previously licensed facility at a different site.

Summary of Denial of Petitioner's COL Proposal

Most of the efficiencies and regulatory stability and predictability which are

the object of the petitioner's proposal can be achieved under existing regulations and the guidance that the Commission has directed the staff to prepare. In addition, several key aspects of the petition are based upon a misapplication of the "current licensing basis" concept and the Backfit Rule, and the petition does not represent a viable approach for achieving the desired efficiencies. For these reasons, the Commission is denying the COL proposal as set forth in the petition.

NRC Regulatory Activities as Precedents for Petitioner's Proposal

The petitioner cites several examples of NRC's practice to support the petition. The NRC does not believe that these examples are valid precedents for the petitioner's proposals. Each of these examples is addressed below.

License Renewal

The petitioner suggests that its proposal is consistent with the regulatory concepts underlying the Commission's adoption of Parts 51 and 54 for license renewal of power reactors. See petition at p.7.

As discussed in the ESP section of the Reasons for Denial, the NRC disagrees with the petitioner's analogy.

License Amendments

The petitioner compares the issuance of an ESP to the issuance of a license amendment for a facility, and argues that the NRC does not conduct a fresh assessment of issues that were thoroughly considered in initial licensing of that facility and that are not affected by the proposed amendment. See petition at pp.7-8.

Contrary to the petitioner's suggestion, an application for an ESP or a COL is not analogous to a license amendment. After the NRC licenses a facility, the safety and environmental findings made when NRC initially authorized the facility's construction and operation remain effective throughout the term of the license, and need not be revisited in their entirety in a subsequent license amendment proceeding of limited scope. Only those matters which are within the scope of the proposed license amendment and, therefore, are affected by the amendment, fall within the scope of the NRC's consideration of the license amendment.

The NRC's review of an ESP or COL application is the NRC's initial licensing action. As suggested in the earlier discussion on backfitting, the NRC's licensing decision for a facility located on a specific site is limited to that facility. The NRC never envisioned that

its licensing decision for that facility would have any regulatory significance years later for either a new, separate facility (likely of different design) located at the same site, or a new, separate facility to be located at an entirely different site.

Table S-3 and Spent Fuel Storage Casks

The petitioner states that the Table S-3 generic environmental rulemaking and the rulemakings approving spent fuel storage casks are regulatory precedents for making generic findings by rulemaking, and thereby reducing the scope, or eliminating the need for consideration, of matters in a facility-specific hearing.

The NRC does not regard these rulemakings as analogous to the proposed §§ 52.16 and 52.80. In the Table S-3 rulemakings, the Commission made generic environmental findings which were applicable to all light-water-cooled nuclear power plants. In every spent fuel storage cask rulemaking, the Commission made generic safety and environmental findings which were applicable to every spent fuel storage cask constructed in accordance with the specific cask design approved in that rulemaking. Moreover, each cask design was reviewed and approved by the Commission through the rulemaking for generic use across the United States. By contrast, the NRC licensing determinations, which petitioner's proposals would permit an ESP and COL applicant to reference, are not generic but are limited solely to a consideration of an applicant's proposals and relevant information available at the time of the proposal. Nor did the NRC approve the applicant's proposals with the understanding, and notice to the public, that they would be deemed by rule to be acceptable in a subsequent licensing proceeding for a different facility, without a requirement that their suitability for use in the subsequent licensing action be assessed.

Quality Assurance and Facility Procedure Change Process

The petitioner cites the quality assurance (QA) program change process under § 50.54(a)(3)(ii), and the facility and procedure change process under § 50.59(a)(2)(ii) as examples of situations in which the NRC by rule permits a licensee to implement changes that have been previously approved by the NRC for use by other licensees. See petition at p.8.

While the NRC acknowledges that these two regulatory provisions permit a licensee to implement changes that have been previously approved by the NRC