

### **C.III.3. Finality of Environmental Issues**

#### **C.III.3.1 Finality of Environmental Issues Associated with an ESP**

A COL applicant may reference an ESP. In this situation, the NRC has established a unique relationship between two major Federal actions - the issuance of the ESP and COL. The conclusions from the ESP EIS may be used in the COL application and considered by the NRC staff. The discussion that follows is applicable only to the special circumstances involving the referencing of an ESP in a COL application.

In reviewing an ESP application, the NRC staff prepares an EIS to inform the Commission's decision, determine whether there is an obviously superior alternative site, and, to the extent addressed by the applicant, disclose the environmental impacts associated with constructing and operating one or more nuclear units. Consequently, the ESP EIS is an important starting point for preparing a COL applicant's environmental report (ER). Note that it is the EIS (and not the applicant's ER) that provides the basis for issuing the ESP. As such, the EIS prepared for an ESP would resolve issues within certain bounding conditions, and each such issue is considered resolved at the COL stage, provided that no "new and significant" information has become available on the issue. In contrast, if a given environmental issue was not resolved at the ESP stage, either because sufficient information was not available to permit resolution or because the ESP applicant was permitted to defer the issue (e.g., the benefits assessment), the COL applicant must address the issue in its COL ER. A COL ER must also demonstrate that the design of the facility falls within the site characteristics and design parameters specified in the ESP. In addition, the COL ER must demonstrate that all environmental terms and conditions of the ESP will be satisfied by the date of issuance of the COL. Terms or conditions of the ESP that cannot be satisfied before issuance of the COL may, in some instances, be addressed by including terms or conditions in the COL.

The NRC is ultimately responsible for completing any review required to fulfill its responsibilities under the National Environmental Policy Act. For example, the NRC staff may undertake activities to ensure that an issue that was resolved in an ESP EIS remains resolved at the COL stage (i.e., there is no new and significant information with respect to that issue). However, the COL applicant (the proponent of the action) is expected to initially identify whether "new and significant" information has become available for such an issue. Thus, a COL applicant must have a reasonable process for identifying "new and significant" information with respect to an NRC conclusion documented in the ESP EIS, and should document the results of this process in an auditable form for issues for which the COL applicant does not identify "new and significant" information. Issues for which the COL applicant does identify "new and significant" information must be addressed in the COL ER. Under 10 CFR 51.70(b), the NRC is required to independently evaluate and be responsible for the reliability of all information used in the EIS, including an EIS prepared for a COL application. Toward that end, the NRC staff may (1) inquire into changes to information disclosed in an EIS for an ESP that is referenced in a COL application, and (2) identify new information that may affect the assumptions, analyses, or conclusions in the ESP EIS.

In the context of a COL application that references an ESP, the NRC staff defines "new" (in "new and significant" information) as information that was both (1) not considered in preparing the ESP environmental report or EIS (as opposed to the information in references in these documents, applicant responses to NRC requests for additional information, comment letters, etc.) and (2) not generally known or publicly available during the preparation of the EIS (as opposed to information in published reports, studies, and treatises). New information may include (but is not limited to) specific design information that was not available during the review of the ESP application (especially where the design interacts

with the environment), or information that was in the ESP application, but has changed by the time of the COL application [for example, a change in the regional socioeconomic profile resulting from a natural event (e.g., Hurricane Katrina)]. New information may or may not also be “significant.”

The NRC expects the COL applicant referencing an ESP to have a reasonable, auditable process to ensure that the applicant identifies “new and significant” information, and to describe the process in its COL ER. This process description should include (1) the methods that the COL applicant uses to ensure that it identifies new information, if it exists, and (2) the process for evaluating the significance of new information, if found. Methods to ensure identification of new information include the following:

- reviewing environmental monitoring results
- reviewing related scientific literature
- surveying environmental professionals familiar with the site environs (for example, the environmental and operations staff of a nearby nuclear or other industrial facility)
- exchanging information within the industry through peer groups and industry organizations
- consultations with academicians knowledgeable of the local environment
- consultations with Federal, State, Tribal, and local environmental, natural resource, permitting, and land use agencies
- verifying that the assumptions and representations made in the ESP ER are still valid
- verifying that the NRC staff assumptions documented in the ESP EIS are still valid
- reviewing information needs in the Environmental SRP

The description of the process for evaluating the significance of new information should also include the organizational procedures for handling reports of new information and the criteria used to determine the applicability of such information. Detailed supporting information need not be included in the ER, but should be available in auditable form for review by the NRC staff. Such supporting information may include the following:

- qualifications of participants involved in the process, their organizational affiliations, how they interact among themselves, and the role they serve in the process
- consultations with academicians and Federal, State, Tribal, and local environmental, natural resource, permitting, and land use agencies
- new information identified and the assessment of its significance (with information that the applicant determines to be both new and significant submitted in the ER, as required by 10 CFR 51.50(c)(1)(iii)).

If the staff determines that new information that was not submitted is significant, it may send a request to the applicant to submit the information.

The NRC staff has explained the relationship between the environmental review of an ESP application and that of a COL application referencing the ESP by analogy to the environmental review process for license renewal. In fact, the process described above for a COL applicant referencing an ESP is consistent with the well-established process for license renewal. For additional information, RG 4.2, Supplement 1, “Preparation of Supplemental Environmental Reports for Applications to Renew Nuclear Power Plant Operating Licenses,” describes the attributes of an acceptable process for identifying “new and significant” information for a license renewal application.

For matters resolved at the ESP stage, if no new and significant information is identified at the COL stage, the NRC staff will rely upon (“tier off”) the ESP EIS, and will state in the COL EIS its conclusion set forth in the ESP EIS.

The initial burden to assess issues that were deferred to the COL application falls to the COL applicant. The COL applicant must provide information sufficient to resolve any significant environmental issue that was not resolved in the ESP proceeding. The information contained in the COL application should be sufficient to aid the NRC staff in developing its independent analysis (see 10 CFR 51.45).

In addition, 10 CFR 51.50(c)(1)(i) requires a COL applicant to provide information “to demonstrate that the design of the facility falls within the site characteristics and design parameters specified in the early site permit.” This demonstration is part of the information that an applicant for a COL that references an ESP should provide in its ER to enable the NRC staff to perform the analyses required to be included in the COL EIS under 10 CFR 51.92(e). This required demonstration involves providing actual design or site characteristics and showing that the actual values are bounded by the values set forth in the ESP. For example, if the ESP specified a system flow of  $\leq 5000$  gpm, it would not be sufficient for the COL ER to include a simple statement that the actual flow is  $\leq 5000$  gpm. Rather, the ER should provide the actual system flow and show that it is bounded in a conservative direction by the flow value assumed in the ESP.

### **C.III.3.2 Finality of Environmental Issues Associated with a Design Certification or Manufacturing License**

For environmental matters resolved in a design certification Environmental Assessment (EA) or a manufacturing license EA, the COL ER may incorporate by reference the EA previously prepared by the NRC for the referenced design certification or manufacturing license. If the previous EA is referenced, then the COL ER must contain information to demonstrate that the site characteristics for the COL site fall within the site parameters in the design certification or manufacturing license EA.

For matters resolved at the design certification or manufacturing license stage, if the site characteristics for the COL site fall within the site parameters in the design certification or manufacturing license EA, then the NRC staff will rely upon (“tier off”) the earlier EA, and will state in the COL EIS its conclusion set forth in the EA for the design certification or manufacturing license.