

approval.<sup>1</sup> Specifically with regard to its determination to use section 72.48, Entergy's June 2 letter contended that the minor changes proposed for the VSC-24 cask were covered by a "plain reading" of the regulations. It argued the general license issued under 10 CFR part 72 was a license "issued under this part," and that the minor changes to the VSC-24 by Entergy, as the license "holder," could therefore be made to address site-specific considerations "as determined necessary" by Entergy. It also contended its approach was consistent with the regulatory background of the general license, particularly the Commission's objective to provide for "a regulatory framework allowing on-site spent fuel storage 'without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'" (55 FR 29181)." Entergy Letter at 2.

It is the foregoing determination by Entergy with which the Petition takes issue.

The Petition asserts as bases for its requests that: Entergy is currently pursuing spent fuel storage at ANO through use of 10 CFR Subparts K and L; ANO currently intends to utilize the VSC-24 constructed by vendor SNC under an SAR submitted in October 1991, and safety evaluation report (SER), issued by the NRC in April 1993; and NRC response, dated January 31, 1994, to an October 13, 1993, public request for information, stated that Subparts K and L of 10 CFR Part 72 are silent on cask SAR and certificate changes after the final rule; an ANO request for a rule exemption to 10 CFR 72.234(c) was granted by the NRC to allow for the fabrication of four VSC-24 casks to the longer length prior to NRC approval of SNC's June 14, 1993, submittal of Revision 1 to the 1991 VSC-24 Cask SAR; a February 14, 1994, memorandum to NRC Assistant General Counsel Treby requested a legal interpretation of the applicability of 10 CFR 72.48 to general licenses issued under 10 CFR 72.210; a May 19, 1994, meeting was held regarding SNC's revisions to the VSC-24 SAR and the applicability of 10 CFR 72.48 to general license users, as well as a June 3, 1994,

memorandum regarding this meeting which stated that "the licensee can make its own interpretation of the regulations;" and a letter dated June 2, 1994, from Entergy to the NRC which stated that Entergy has directed SNC to fabricate all fourteen planned casks with the increased length and that Entergy plans to continue to conduct evaluations in accordance with 10 CFR 72.48.

Entergy has not filed any comments with the NRC following publication of the Petition.

#### Discussion

As the discussion that follows will set forth in detail, we have determined that ANO, as a general licensee under 10 C.F.R. 72.210, can make use of 10 CFR 72.48. This determination is based first on the words of 10 C.F.R. 72.48 itself which are fully consistent with use of the authority in that section by a general licensee. Second, the determination is based on regulatory policy considerations. These include the extensive NRC safety review at the time of cask approval, the limited nature of the subsequent changes permitted under 10 C.F.R. 72.48, and the fact that NRC regulations in other contexts and over many years have permitted utilities such as ANO to make similar types of changes to nuclear facilities that involve safety issues previously reviewed by NRC.

This approach is well suited to the 10 C.F.R. Part 72 general license framework, especially given the Congressional purpose underlying the Nuclear Waste Policy Act of 1982 that directed the NRC to establish a licensing framework for spent fuel storage technologies that can be approved by the Commission for use at reactor sites "without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission" (55 FR 29181). Because 10 C.F.R. 72.48 permits certain changes by a licensee without Commission approval, making it available to general licensee's will further this Congressional purpose.

#### A. The Language of Section 72.48.

An analysis of the pertinent NRC regulations regarding use of 10 C.F.R. 72.48 by a general licensee shows that ANO's use of that authority is covered by the regulations. The relevant regulations and our analysis of them are given below.

10 CFR 72.48(a)(1) provides as follows:

*The holder of a license issued under this part may: (i) Make changes in the ISFSI \* \* \* described in the Safety Analysis Report, \* \* \* (iii) \* \* \**

without prior Commission approval, unless the proposed change, test or experiment involves a change in the license conditions incorporated in the license, an unreviewed safety question, a significant increase in occupational exposure or a significant unreviewed environmental impact. (Emphasis added.)

Further 10 CFR 72.210 provides as follows:

*A general license is hereby issued for the storage of spent fuel in an independent spent fuel storage installation at power reactor sites to persons authorized to possess or operate nuclear power reactors under Part 50 of this chapter. (Emphasis added.)*

In order to determine whether 10 C.F.R. 72.48 can be interpreted to cover the general license in section 72.210, the first question is whether the general licensee is "the holder of a license issued under this part," as required for the application of 10 CFR 72.48. We think the language of § 72.210 answers this question. The phrase "[a] general license is hereby issued," leaves no doubt the general license is "a license issued under this part." Because a general licensee is "the holder of a license issued under this part," § 72.48(a)(1) therefore applies.

The second question, in order to determine if 10 CFR 72.48 can be interpreted to apply to a general license, is whether changes to a certified cask by a general licensee can appropriately be termed "changes in the ISFSI \* \* \* described in the Safety Analysis Report," as required for the application of 10 CFR 72.48. We think the language of § 72.210 also resolves this issue. Specifically, the regulatory language of the general license authorizes "storage \* \* \* in an independent spent fuel storage installation \* \* \* in casks approved under the provisions of this part."<sup>2</sup> (Emphasis added.) The ISFSI under the general license incorporates the NRC approved casks. Further the NRC's approved casks under the general license are ISFSI components described in a safety analysis report and, specifically, in the cask vendor safety analysis report (SAR).<sup>3</sup> Therefore, changes to an NRC-approved cask, used in an ISFSI, by the general licensee literally are "changes in the ISFSI \* \* \* described in the Safety Analysis Report," and therefore are reasonably

<sup>1</sup> In particular, section 72.48(a)(1) provides in pertinent part as follows:

The holder of a license issued under this part may:

(i) Make changes in the ISFSI [i.e., independent spent fuel storage installation] \* \* \* described in the Safety Analysis Report \* \* \*

\* \* \* without prior Commission approval, unless the proposed change \* \* \* involves a change in the license conditions incorporated in the license, an unreviewed safety question, a significant increase in occupational exposure or a significant unreviewed environmental impact.

<sup>2</sup> See 10 CFR 72.212(a)(2) ("This general license is limited to storage of spent fuel in casks approved under the provisions of this part.")

<sup>3</sup> See 10 CFR 72.230(a) ("A safety analysis report describing the proposed cask design and how the cask should be used to store spent fuel safely must be included with the application.")