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August 10, 2000

Mr. David L. Meyers  
Chief, Rules and Directives Branch  
Office of Administration  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

**Re: DG-1097, NRC Draft Regulatory Guide: "Fire Protection for Operating Nuclear Power Plants"**

Dear Mr. Meyers:

The attachment to this letter provides comments by the Fire Protection Clearinghouse ("Clearinghouse")<sup>1</sup> on Draft Regulatory Guide ("DG") 1097, "Fire Protection for Operating Nuclear Power Plants," published in the *Federal Register* on June 22, 2000.<sup>2</sup> The Clearinghouse commends the NRC Staff on this ambitious undertaking and welcomes the opportunity to submit comments on it. We are concerned, however, that the regulatory role of this guidance is unclear and sends a mixed message concerning licensees' obligations with respect to compliance with the proffered guidance. In addition, the inclusion of new regulatory positions may constitute impermissible backfits under 10 CFR § 50.109.

<sup>1</sup> The Fire Protection Clearinghouse is a consortium of nuclear utility licensees representing approximately 20 nuclear power plants.  
<sup>2</sup> 65 Fed. Reg. 38,866 (2000).

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Add: E. Campbell (CEAL)

Mr. David L. Meyers  
August 10, 2000  
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If you have any questions or would like to discuss these matters further, please call me at (202) 371-5729, or Donald Ferraro at (202) 371-5838.

Sincerely yours,

*Original signed by P. Campbell*

Malcolm H. Philips  
Patricia L. Campbell

Counsel to the Fire Protection Clearinghouse

Attachment

## **A. General Comments**

### Fragility

Fragility is a new concept in the NRC's characterization of fire protection programs, and pursuant to this draft Regulatory Guide, would be considered in any determination regarding the fire survivability and repair of systems, structures, and components subjected to fire damage. These uses of fragility are inconsistent with the underlying purposes of the Regulatory Guide, which is intended to be a compilation of the currently applicable *deterministic* fire protection requirements for which the fire survivability and repair have already been inherently considered. The proposed uses of the concept of fragility are more appropriate for a risk-informed, performance-based regulatory methodology. Accordingly, the concept of fragility should be removed from the Section B discussion of Fire Protection Goals/Objectives, and Section C.1.1, "Fire Protection Program." It also appears that the draft guidance on fragility is more extensive than the requirements of Appendix R.

### Deviations

Section 1.4.4, "Deviations," would inappropriately apply procedures and standards to licensees' requests for deviations from commitments to Sections III.G, III.J, and III.O of Appendix R. The criteria for exemptions do not apply to such deviation requests because those licensees' commitments are not the procedural equivalent of rules. Rather, the license amendment criteria in 10 C.F.R. §§ 50.90-92 may apply if deviations do not satisfy the criteria in 10 C.F.R. § 50.59 for changes that do not require prior NRC approval. The final Regulatory Guide should appropriately reflect the difference between deviations from commitments and exemptions from regulations.

### ADS/LPCI

Section 5.3.2.3, "Reactor Pressure Control and Decay Heat Removal," discusses the use of the automatic depressurization system ("ADS") in conjunction with the low-pressure coolant injection system ("LPCI") to achieve and maintain safe shutdown if demonstrated to maintain fission product boundary integrity. This section also indicates that the use of ADS/LPCI requires NRC approval through the exemption/deviation process, as it does not comply with the criteria specified in Section III.L of Appendix R. The NRC may, as it has in the past, approve the use of ADS/LPCI either as alternate shutdown or as a redundant safe shutdown method, as would be reflected in a plant's licensing basis. The final Regulatory Guide should clarify the distinction between alternate shutdown and redundant safe shutdown.

### Conflict with Guidance in NEI 96-07

We also are concerned that the guidance in Section 1.4.1 regarding 10 C.F.R. § 50.59 evaluations is in direct conflict with similar guidance in NEI 96-07, "Guidelines for 10 C.F.R. § 50.59 Safety Evaluations." Specifically, DG-1097 notes that a Section 50.59 evaluation is required to change the fire protection licensing basis. NEI 96-07, however, provides for other acceptable means. The final Regulatory Guide should be consistent with NEI 96-07.

## **B. Backfit Observations**

### **Implied Backfit**

The Introduction to DG-1097 states that the guidance was developed to "provide a comprehensive fire protection guidance document, and to identify the scope and depth of fire protection that the [NRC] staff has determined to be acceptable for operating nuclear plants." In order to meet that goal and set forth comprehensive guidance, the "positions and guidance provided are a compilation of fire protection requirements and guidelines from the existing regulations and staff guidance." In addition, "*new* guidance is provided where the existing guidance is weak or non-existent" (emphasis added). By combining existing and new guidance, the NRC Staff concludes that its proposed positions and guidance provide "an acceptable level of fire protection for operating nuclear power plants." Moreover, the NRC Staff suggests that this guide may be used for licensee self-assessments to provide "reasonable assurance that the necessary elements of the program described in the positions statements, Regulatory Position C of this guide, have been considered."

Regarding licensee implementation of the Regulatory Guide, the draft Regulatory Guide states that "[e]xisting fire protection programs, or elements thereof, need not be changed to meet the positions contained within this guide to the extent that these existing programs or elements have been found to be acceptable to the NRC, alternative positions are proposed, and any changes to these accepted programs or elements are reviewed in accordance with the criteria of 10 C.F.R. § 50.59." It also states, however, that "it presents the best available methods for meeting fire protection requirements and objectives that are acceptable to the Commission, and will be used in the evaluation of fire protection programs for operating nuclear plants. Nothing in this guide prohibits a licensee from proposing alternative method(s) for complying with specified petitions of the Commission's regulations."

The fact that the Commission will use the Regulatory Guide as the basis for evaluating the adequacy of fire protection programs implies that the positions in the draft Regulatory Guide are mandatory and, therefore, potentially impose multiple backfits without adherence to the backfit rule. To avoid the potential for improperly imposed backfits, the final Regulatory Guide should clearly state that alternative methods will be evaluated on their own merit and that licensees are not required to justify any differences between their fire protection programs and positions in the Regulatory Guide. Rather, the NRC Staff is required to demonstrate that a position in the Regulatory Guide is the only acceptable solution and applicable to a plant *before* suggesting that a plant's fire protection program is not in compliance with NRC requirements.

### New Guidance

As mentioned above, the Introduction to the Regulatory Guide explicitly states that "new guidance is provided where the existing guidance is weak or non-existent." Fire protection programs will be inspected for noncompliance with new guidance, or an agreed-on alternative. Therefore, the guidance has the effect of establishing new NRC Staff positions as official interpretations of the fire protection rule. Neither a rulemaking proceeding nor backfitting analysis was conducted by the NRC, however, prior to incorporating these new positions in the draft Regulatory Guide. Specifically, we note that the draft Regulatory Guide does not indicate which guidance is "new" versus "existing," further complicating these backfitting concerns. Appropriate requirements of the backfitting rule (10 C.F.R. § 50.109) must be followed by the NRC before it imposes new requirements on licensees.

### General Design Criteria

Draft Regulatory Guide Sections 2.1.1 through 2.1.4 indicate that General Design Criteria ("GDC") 3, "Fire Protection," 15, "Reactor Coolant System Design," 19, "Control Room," and 23, "Protection System Failure Modes," are applicable to all plants.<sup>3</sup> GDC 3 was backfit upon all plants through 10 C.F.R. § 50.48, "Fire Protection," and GDC 15, 19, and 23 were explicitly backfit by other NRC requirements or by specific licensee commitments; however, these GDC do not apply as a general matter to pre-GDC plants. Accordingly, this regulatory position is a backfit for pre-GDC plants. The guidance should distinguish between GDC plants and pre-GDC plants in these sections.

### NFPA Codes

NFPA Codes are referenced throughout the draft Regulatory Guide. An attempt to apply any other version of a code that is more burdensome than the code of record for a specific plant would be an impermissible backfit unless the applicable NRC procedures for backfitting, as required by 10 C.F.R. § 50.109, are followed. The draft Regulatory Guide does not specify how licensees are to proceed when there is no code of record for the NFPA Code cited in the Regulatory Guide. Any attempt to apply a code that is not part of the plant's licensing basis would be a backfit. If the final Regulatory Guide imposes backfits in the application of these codes, then they are subject to the cost-benefit analysis requirements of 10 C.F.R. § 50.109.

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<sup>3</sup> See SECY-92-223, "Resolution of Deviations Identified During the Systematic Evaluation Program," September 18, 1992.