

September 14, 2000

Mr. C. Lance Terry
Senior Vice President and Principal Nuclear Officer
TXU Electric
Comanche Peak Steam Electric Station
P.O. Box 1002
Glen Rose, TX 76043

Dear Mr. Terry:

I am responding to your letter of August 11, 2000, concerning the dispositioning of industry comments related to the draft comprehensive fire protection regulatory guides that were issued for public comment in October 1999 (DG-1094) and April 2000 (DG-1097). In your letter, you stated your concern that the U.S. Nuclear Regulatory Commission (NRC) did not address the majority of the comments on DG-1094 that were provided by the Nuclear Energy Institute (NEI) in January 2000 and offered no explanation for this action. I assure you that the staff considered all the comments received during the public comment period for DG-1094, and several changes to the draft were made as a result of that feedback. The staff is reviewing the comments received on DG-1097 and will give due consideration to those comments as well.

Like your letter, many of the comments on DG-1094 were related to the implementation of the active regulatory guide and the industry's backfit concerns with existing and new staff guidance contained in the draft rather than the specific technical content of the guide. In your letter you stated that the new regulatory positions in the document may constitute "impermissible backfits" under 10 CFR 50.59. The implementation and backfit issues, as well as the staff's positions on the limited technical comments received, were addressed at the public meeting on February 23, 2000, that was held to discuss the resolution of comments on DG-1094. These issues were also discussed by the NRC staff at the NEI Fire Protection Information Forum held in Philadelphia during June 2000. To address the implementation and backfit issues, the staff has stated on numerous occasions that the general information section of all NRC regulatory guides which contains the statement; "Regulatory guides are not substitutes for regulations, and compliance with regulatory guides is not required" is adequate for resolving implementation and backfit issues. I assure you that if any necessary backfits are identified by the staff resulting from the use of the active guide or any other fire protection oversight activity, they will be imposed on licensees only in accordance with the requirements specified in 10 CFR 50.109.

In your letter, you also expressed your concern regarding the incorporation by reference in the draft guides of codes and standards published by the National Fire Protection Association (NFPA). The citation of NFPA documents in NRC regulatory guidance documents has been the historical practice of the staff and is consistent with Public Law 104-113 and Office of Management and Budget Circular A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards." Many of the NFPA codes and standards cited in the existing NRC fire protection guidance documents have been withdrawn or replaced and are no longer in print. (See NUREG/CR-5973, "Codes and Standards and Other Guidance Cited in Regulatory Documents.") The staff reviewed the existing NFPA citations in its guidance documents and when a previously cited NFPA document had been replaced, the staff referenced the current

code or standard. The staff also referenced new NFPA documents that were applicable to nuclear power plant applications. As previously noted, compliance with regulatory guides or documents referenced in regulatory guides is not required.

The Regulatory Guide will be used by the staff and the industry as a consolidated comprehensive reference tool in that it will be a compilation of methods acceptable to the NRC staff for meeting the Commission's regulations. As such, this document is intended to reduce the effort necessary for all involved in determining best current practices in the complex area of nuclear power plant fire protection. Of course, nothing in this regulatory guide or any other regulatory guide changes a plant's licensing basis.

Thank you for your letter and your interest in fire protection. If you have any questions or require additional information, please contact Edward A. Connell at 301-415-2838.

Sincerely,

/RA/

Brian W. Sheron, Associate Director
for Project Licensing and Technical Analysis
Office of Nuclear Reactor Regulation

cc: NEI
R. Walker, TXU Electric

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Office of Nuclear Reactor Regulation

cc: NEI
R. Walker, TXU Electric

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*see previous concurrence

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