

November 3, 2000

Mr. James W. Davis
Director, Operation Department
Nuclear Generation Division
Nuclear Energy Institute
1776 I Street, NW, Suite 400
Washington, D.C. 20006-3708

Dear Mr. Davis:

The purpose of this letter is to acknowledge your e-mail of October 18, 2000, enclosing Draft 6 of Nuclear Energy Institute's (NEI) Safeguards Performance Assessment (SPA) Program, NEI 99-07, including changes made to deal with earlier comments made by the NRC staff. This document and NEI's plans for implementing a program to pilot it were discussed during a public meeting on October 19, 2000.

The staff has reviewed Draft 6 and, with the exceptions noted below, the staff believes that the program is now ready for piloting. During piloting, NRC will continue to schedule and conduct the Operational Safeguards Response Evaluation (OSRE) inspection program. To that end, the staff will be recommending that the Executive Director for Operations forward a paper, attaching NEI 99-07 and the staff's comments, and requesting Commission approval of the staff's activities associated with the commencement of SPA piloting. The paper will additionally provide for Commission consideration the staff's intentions with respect to the handling of findings identified during the pilots and any relief a licensee could obtain as a volunteer for the pilot. The staff anticipates transmitting this paper to the Commission at the end of November 2000. I request any additional revisions to NEI 99-07, occur in time to support NRC staff review and consideration in support of the Commission Paper.

As mentioned during the public meeting, there remain certain issues which should be resolved prior to piloting. The first issue deals with credit for operator actions. In order to allow for the objective consideration of operator actions in contingency response, the NRC has recently clarified the guidance for conducting OSRE. Credit for operator actions may be considered in the formulation of a protective strategy and target sets. These operator actions should meet the criteria specified in your letter of August 10, 2000, as was discussed at the public meetings of September 6 and October 19, 2000. In OSRE, the licensee may take credit for operator actions and related equipment in preventing core damage, only if that equipment and those actions are listed in the target set and are agreed to by consensus before initiation of the exercise. This method allows for the mock adversaries to be cognizant of the anticipated actions and components which are a part of the licensee's protective strategy for a given scenario and is a step which ensures consistency with the Design Basis Threat. On the other hand, if the licensee takes credit for equipment, procedures, and/or training that are outside of the target set, the credit may only be used to mitigate the consequences of a lost target set and evaluate the overall risk to the health and safety of the public. The importance of resolving this issue stems from the potential dissimilar conclusions regarding the results of the SPA exercise by the licensee's self-assessment and NRC observers.

Second, Draft 6 of NEI 99-07 offers a definition of radiological sabotage that is not the same as the definition offered for that phrase in 10 CFR 73.2. For clarity, the definition should be removed or be rephrased to state the definition in the regulation. The final definition of radiological sabotage can be addressed in the ongoing rulemaking process.

Third, regarding the issue of cable trays, the staff believes that they should be considered during the development of target sets, even if the cabling is not readily identifiable. The proximity of these cable trays and the role played by the cables in operating the equipment may indicate a need to consider them in the assessment of targets to be contained within a set.

Other issues, which are important, but are considered to be issues that are not at a level requiring resolution prior to the commencement of the pilot program include:

First, NEI 99-07 refers to the prevention of "significant core damage" as a criterion to be used in evaluating licensee exercises. The NRC staff published SECY-00-0063, "Staff Re-Evaluation of Power Reactor Physical Protection Regulations and Position on a Definition of Radiological Sabotage," in the Federal Register to solicit public comments on the appropriate criterion to be used in designing and evaluating licensees' security programs, focusing on the appropriateness of using critical safety functions as the criterion. As stated during the public meeting of October 19, 2000, the NRC staff acknowledges the existence of the term "significant core damage" within its own documentation. The staff remains concerned over the meaning of the term "significant," the ability to preclude further core damage once damaged, and the safeguards program vulnerabilities which would allow for core damage, itself. The clarification of this term will be provided in future Commission correspondence and the rulemaking which, as in SECY 00-0063, will include the consideration of spent fuel.

Second, the staff desires clarification of the number of force-on-force scenarios that will be conducted during the pilot program and proposed triennial evaluated exercise.

During the recent public meeting, questions were raised on the staff's intentions in providing relief from OSREs for licensees who volunteer to participate in the SPA pilot and the manner in which findings from these SPA exercises would be handled, including enforcement. As previously mentioned, the staff intends to forward its recommendations concerning any scheduling relief, disposition of findings and related enforcement to the Commission in the paper described above. The staff will proceed on these matters in accordance with the Commission direction.

The staff has completed a draft version of Inspection Procedure 71130.XXX, "Observation and Evaluation of Safeguards Performance Assessment." Although the procedure is currently undergoing further staff and regional review, as mentioned during the October 19, 2000, public meeting, we are making the current version accessible to the public via ADAMS in order to provide all agency stakeholders the ability to view the document. The ADAMS accession number is ML003766675.

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The staff anticipates additional issues and comments on the SPA program to be raised by stakeholders and NRC personnel during the course of the pilot and in the associated lessons-learned. These comments will be considered for incorporation into program documents and the related rulemaking activities.

/RA/

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