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Rules and Directives

Re: **Comments on Proposed Information Collection Initiative**

This provides comments by the Nuclear Regulatory Services Group ("NRSRG")<sup>1</sup> on the Nuclear Regulatory Commission's ("NRC") proposed "information collection initiative" associated with licensing actions and other regulatory activities. 65 Fed. Reg. 76669 (December 7, 2000). Under the initiative, licensees and other external stakeholders would be expected to include in certain types of requests submitted to the NRC information on how the requested action contributes to the NRC's goals of maintaining safety and reducing unnecessary regulatory burden. The NRC intends to use the information provided to prioritize allocation of NRC Staff resources so as to improve the effectiveness in demonstrating that NRC actions optimally reduce unnecessary regulatory burden on reactor licensees while maintaining safety.

These comments supplement our previous observations, which were presented at the NRC's meeting with stakeholders on September 20, 2000. Those comments focused on the NRC's need to ensure that the NRC would develop a flexible process for meeting its information collection needs. We also stressed that any new information

<sup>1</sup> The Nuclear Regulatory Services Group ("NRSRG") is a consortium of seven nuclear reactor licensees represented by the law firm of Hopkins & Sutter. The members of the NRSRG collectively are involved with the ownership or operation of 32 power reactors in the United States.

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collection process should not itself become an additional regulatory burden. We also suggested that the process should accommodate licensing actions that result in a slight increase in risk, consistent with NRC Regulatory Guide 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis." Finally, we recommended that the process explicitly apply to burden-reduction licensing actions.

### **Specific Comments**

#### **Voluntary Nature of the Initiative**

The NRC has consistently characterized this information collection effort as voluntary. The NRC also has consistently stated that it will use this information as part of its determinations for prioritizing licensees' requests for regulatory actions. As a practical matter, therefore, there will be tremendous pressure on licensees to participate in this voluntary information collection effort. A licensee's determination not to provide the information voluntarily may lead to delay in NRC approval to the detriment of the licensee's performance. These circumstances suggest that the NRC should recognize the realistic impacts of this information gathering initiative by providing clear criteria as to how the information will be used to prioritize licensees' requests for regulatory action.<sup>2</sup>

#### **Information Expected**

The NRSRG appreciates the NRC's recognition that the voluntary information sought by the NRC in applicable stakeholder submittals should be as simple as possible, so that it does not become time-consuming or resource-intensive for stakeholders, while still providing meaningful information. 65 Fed. Reg. at 76670. To keep the information gathering simple, we suggest that the NRC consider using a one-page checklist to obtain the desired information. To minimize the resource burden, the information should be limited to the minimum amount necessary for the NRC to make informed decisions about prioritization and to report meaningful data to Congress and the President on how the NRC is meeting its regulatory performance goals. The burden on stakeholders to provide the information should be limited so that it does not become another source of undue regulatory burden.

Moreover, to provide meaningful information, the information requested should generally be limited to an estimate of the burden reduced and the change in risk, as measured by either a change in the core damage frequency ("CDF") or reduction in total radiation exposure. Only for specific licensee requests where other measures are appropriate should additional information be requested. To ensure that such

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<sup>2</sup> Because a licensee's failure to voluntarily participate in this initiative could adversely affect a licensee's ability to cost-effectively operate its plants, it could be argued that this initiative actually is not voluntary and should be subject to both rulemaking and the NRC's backfit rule.

information is uniform, practical and meaningful, as desired by the NRC, such additional information should be identified by the NRC in conjunction with its review of initial licensee requests for which changes in CDF and radiation exposure are not the only appropriate factors to be considered.

### **Applicable Submittals**

The NRC intends to collect information under this initiative on requests for license amendments, topical reports, rulemaking petitions and license renewal applications. These are broad classes of requests for regulatory actions that are important to licensees. Therefore, except for adding a category for other burden reduction initiatives, as discussed below, no other category of request for regulatory action needs to be added to this list as long as it is understood that all other requests for regulatory actions will be given priorities lower than the priorities given to any requests in the categories listed above. The NRSRG also notes that unless the NRC's algorithm for assigning priorities recognizes that the highest priority needs to be given to license amendments needed to support plant operations, license renewal applications, and license transfer applications, these requested actions should automatically be given the highest priorities without the need for providing information in accordance with this initiative.

The NRSRG supports the NRC's intent to explicitly encourage licensees to submit "burden reduction initiatives," which would include what were previously termed Cost Beneficial Licensing Actions ("CBLA") but which should not be limited to actions meeting the stringent CBLA criteria. In particular, there would be no need to demonstrate high economic benefits as a threshold criterion. In this regard, care should be taken not to weight the "highest return in reducing unnecessary regulatory burden" so heavily as to implicitly restore such a threshold for prioritization.

Burden reduction initiatives could take the form of a Topical Report applicable to a group of licensees or a plant-specific license amendment request. While the proposed initiative would appear to apply to these types of licensing actions, burden reduction initiatives should be explicitly listed among the types of actions covered so as not to give the appearance of penalizing such submittals or placing too low a priority on them. The process, in fact, should place a priority on burden-reduction initiatives, just as the former CBLA process did.

### **Measuring the Impact on Safety and Burden Reduction**

The NRC has recognized that requests that involve acceptable reductions in safety margin can receive high priorities. We suggest that the NRC should apply its current policy in Regulatory Guide 1.174 to evaluate proposals that carry a slight increase in risk. In particular, as long as the absolute magnitude of the risk would remain small after a proposed change, a slight decrease in margin or increase in risk should not be treated as significant. We especially suggest that where proposals will reduce excess conservatism in requirements or eliminate outdated requirements the proposal should be treated as maintaining safety. Although margin may be reduced,

that reduction should not be counted negatively where the current risk level has been conservatively set too low.

### **Prioritization**

The NRC intends to prioritize requests for regulatory action by considering five factors: (1) public health and safety; (2) operational significance; (3) statutory significance; (4) stakeholder standing; and (5) merit. In addition, the NRC also will factor in the established NRC policy and existing guidance on determining review priority and scheduling contained in the attachment to NRR Office Letter No. 803, "Guide for Processing License Amendments."

Several aspects of this proposal require clarification. First, the meanings of some of the factors, such as stakeholder standing and merit, are not clear. Second, the weights assigned to the factors are not provided. Third, the algorithm for combining all of the inputs into a priority ranking as an output is not specified. Finally, the NRC should clarify how the "priority factors" listed in the proposed initiative are treated for purposes of determining review priority under Office Letter 803. These clarifications are necessary to make the prioritization scrutable.

In establishing the prioritization algorithm, the NRC should provide for some tradeoff among the performance goals. For example, where a proposed licensing action would result in a substantial cost savings with a slight increase in risk (the resulting risk still being acceptable), the action should still be eligible for a high priority. In our view, preference should be given to the review of licensing actions proposed by power reactor licensees that involve modifications or enhancements related to reactor operations.

The NRC observes in the proposed initiative that the risk reductions and cost savings expected from a particular licensing action are not always easy to quantify. Accordingly, the NRC acknowledges that *qualitative* estimates of the expected reductions in risk and cost may be more realistic than quantitative estimates. We support this approach and the NRC's observation that to make this approach work it is necessary to adopt uniform, practical and meaningful yardsticks. The NRSRG believes that it will be difficult to develop such yardsticks in the abstract. Rather, we suggest that suitable yardsticks can be developed through an ongoing process of reviewing requests that are supported by qualitative estimates. Such a review process should involve all licensees who are interested in participating.

### **Additional Improvements**

We appreciate that the NRC has already made significant improvements in the licensing action review process. Nevertheless, the NRC should take the opportunity to enhance its internal review process further. Some additional enhancements to consider include:

- Maintaining an effective avenue for early informal interaction with the NRC Staff on the priority and schedule for licensing action reviews, as well as on the merits of the requested action.
- Maintaining objective decision criteria for both the prioritization of requests as well as for NRC acceptance. In this regard, the internal review process should allow for greater reliance on precedent. Where a licensing action has been previously approved for one licensee, other licensees seeking the same action should be able to rely on the earlier precedent. The same goes for the precedent on the priority assigned to a particular licensing action. Similar requests should be assigned similar priorities.
- Maintaining adherence to schedule. The Staff and the licensee should agree upon a schedule for completion of Staff review, and the agreed-to schedule should be met unless a sound justification exists for extension.

Finally, to help ensure uniformity in the application of the information collection process, the NRC should consider establishing a process by which a licensee may appeal the Staff's designation of the review priority.

The NRSRG appreciates the opportunity to comment on the NRC's proposed information collection initiative. We believe that the Staff's proposal to prioritize review of licensing actions based upon safety impacts and regulatory burden reduction can be a useful change if implemented appropriately.

Sincerely,



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