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NUCLEAR ENERGY INSTITUTE

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May 21, 2001

Ms. Annette Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Attention: Rulemakings and Adjudications Staff

SUBJECT: Request for Comment on Petition for Rulemaking (66 Fed. Reg. 13267; March 5, 2001)

Dear Ms. Cook:

On behalf of the nuclear energy industry, the Nuclear Energy Institute[1] provides the following comments on the petition for rulemaking filed by Union of Concerned Scientists (UCS), dated November 30, 2000. The UCS petition requests that the NRC revise its regulations to require licensees to submit performance indicator (PI) information used in the NRC's reactor oversight process.

In sum, the industry does not support initiation of a rulemaking for this purpose for three reasons. First, there is no indication that a problem exists necessitating the proposed rulemaking. Second, licensees already are required by regulation to collect or report to the NRC almost all of the information used to develop the performance indicators. Third, the NRC's baseline inspection program is similar in scope to the previous inspection program (although it is far better focused on risk significant systems and activities) and the ROP, therefore, would not place unique and undue burden on the NRC inspection resources if performance indicators were not reported by licensees. The following discussion elaborates on each of the three bases undergirding our recommendation that the NRC not initiate a rulemaking to require submission of PI data.

[1] NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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A. UCS petition does not identify a compelling need that the proposed rulemaking would address.

UCS's petition for rulemaking speculates that, without a regulation compelling licensees to submit PI data, licensees could refuse to submit performance indicator data and, thereby, "degrade the ability of the reactor oversight program to assess nuclear plant performance levels." (See Union of Concerned Scientists' Petition for Rulemaking, 66 Fed. Reg. At 13269). As is demonstrated by the history of the development and implementation of the new ROP and the performance indicators, there is no basis in fact for such speculation.

The initial year of implementation of the ROP confirms that the ROP is an effective and efficient means of assessing safe plant operation. While there is some work to be done to further refine some aspects of the ROP, the industry believes it is a vast improvement over the previous oversight process.

The ROP provides a framework in which safety performance is reviewed in each of seven specific areas or "cornerstones." Each cornerstone is evaluated using performance indicators and risk-informed assessments of inspection findings. These performance indicators and inspection finding determinations provide a consistent, measurable, and objective assessment of nuclear plant safety performance. By applying risk insights and performance based concepts to objectively defined safety and regulatory thresholds, the ROP has established a uniform approach to evaluating safety performance and allocating NRC inspection resources among plants. Importantly, the ROP promotes licensee identification and correction of issues in a timely manner.

The ROP is achieving the goals of ensuring safe plant operation, permitting efficient allocation of NRC and licensee resources, reducing unnecessary regulatory burden and enhancing public confidence in nuclear power plant operation and oversight. The results of the initial year of implementation for the ROP confirm that it leads to greater application of NRC resources to plants with performance problems. As is clearly evident from a review of ROP information on the NRC's website, plants that have exceeded some threshold of performance have been subjected to increased inspections and other regulatory responses designated by the ROP action matrix.

The initial concept of using performance indicators to inform the inspection and assessment process was proposed by the industry to the NRC in 1998. Industry established an assessment task force that began working on performance indicators and continues to this day to channel industry comments to the NRC. Thus the

initial idea and proposal for performance indicators came from industry – it is unlikely that industry would reverse its own decision to support the performance indicator program.

Even preceding the formal implementation of the ROP, eight licensees voluntarily participated in a pilot program, conducted May-November, 1999, during which they submitted data supporting the development and testing of the viability of specific performance indicators. Since the ROP began, a second voluntary pilot program involving 21 reactor units at nine utilities has been conducted to test the accuracy and effectiveness of additional indicators. A third pilot, to test an additional change to a performance indicator, will begin in the next quarter and will involve 23 reactor units at ten utilities. Finally, the industry is on record as supporting research to assess the feasibility of risk-based performance indicators in the future.

To date, licensees have compiled and voluntarily submitted data to support the NRC's evaluation of each performance indicator for five consecutive quarters (beginning in April 2000). The PI information has been submitted by licensees in a timely manner and has been of sufficient accuracy to maintain NRC's confidence in its validity. The Reactor Oversight Process Initial Implementation Evaluation Panel has confirmed that, in practice "licensees can accurately report performance indicators without an excessive burden, and the public can easily understand the performance data." (See Reactor Oversight Process Initial Implementation Evaluation Panel Report, May 10, 2001 at 12).

Thus, there is more than a year's worth of evidence that the ROP is achieving its overall regulatory objectives and that licensees voluntarily submit all performance indicator data for NRC review. We believe that the industry's support for this program thus far should provide a reasonable basis for concluding that licensees will continue to collect and submit the requisite information necessary for the NRC to perform the ROP evaluations.

B. Current regulations already direct licensees to collect or report to the NRC most information used to develop performance indicators.

It is not necessary to amend NRC's regulations to require licensees to submit the performance indicator information because such a regulation would duplicate current NRC reporting or compilation requirements that encompass PI data. As is evident from the following chart, with the exception of only four of the 18 performance indicators, various NRC and Federal Emergency Management Agency (FEMA) regulations already compel licensees to report the data used for PIs, or to compile the data such that it is readily available for NRC review.

Performance Indicator	Reporting /Compilation Requirement
Scrams	4 hour report per 10 CFR 50.72.
Scrams with Loss of Normal Heat Removal	4 hour report per 10 CFR 50.72.
Unplanned Power Changes	No requirement.
Safety System Unavailability (four indicators)	Required to be compiled and trended per 10 CFR 50.65. (Easily retrievable by an inspector.)
Safety System Functional Failures	Required to be reported per 10 CFR 50.73(a)(2)(v).
RCS Activity	Required to be compiled and recorded to meet Technical Specifications. (Easily retrievable by an inspector.)
RCS leakage	Required to be compiled and recorded to meet Technical Specifications. (Easily retrievable by an inspector.)
Drill/Exercise Performance	No requirement.
ERO Drill Participation	No requirement.
Alert and Notification System	Federal Emergency Management Agency Guidance Memoranda PR-1 Policy requirements on NUREG 0654/FEMA REP 1 and 44 CFR 350 Periodic Requirements.
Occupational Exposure Control	No requirement; however, PI is based on meeting Technical Specifications requirements. Noncompliances are documented in corrective action program.
RETS/ODCM Radiological Effluent	Required to be reported as exceedances of Technical Specifications requirements per 10 CFR 50.73.
Protected Area Security Equipment Index	Required to be recorded in security logs. (Easily retrievable by inspectors.)
Personnel Screening Program	Required to be submitted per 10 CFR 73.56 and 73.57.
FFD/Personnel Reliability Program	Required to be reported per 10 CFR Part 26 and 10 CFR 73.56.

Even for PI's for which NRC has not imposed an independent regulatory requirement to collect or submit data, licensees are obligated to document the activity on which the PI is based in the regular course of plant operation. Using alert and notification issues for emergency planning as an example, we note that

Appendix E to Part 50 requires licensees to have procedures for prompt public notification capability. Licensees are required to test public notification equipment, including conducting a silent test every two weeks, a growl test quarterly or when maintenance is performed, and a complete cycle test annually and as required for formal exercises testing. Licensees develop and maintain records of each test as part of the normal course of plant operation. These records are available to NRC inspectors. In addition, FEMA directs each state to submit an annual letter of certification to the appropriate FEMA Regional Director addressing licensee compliance with periodic requirements for the proceeding year. (See Federal Emergency Management Agency Guidance Memoranda PR-1 Policy requirements on NUREG 0654/FEMA REP 1 and 44 CFR 350 Periodic Requirements.)

In other areas where currently there are no parallel requirements to report the performance indicator data, there are requirements to identify and correct conditions adverse to quality (10 CFR 50 Appendix B, Criterion XVI). Deficiencies in these areas must be identified and corrected and records maintained in a corrective action program available to the NRC during an inspection. During baseline inspections, the NRC is free to look for deficiencies in the areas covered by the performance indicators. In fact, NRC inspection procedures require that 10% of the hours in each baseline inspection be directed to a review of the corrective action program in that area. Thus, problems in these areas already are required to be documented and those records made available for NRC review. While we recognize that the information is not in precisely the same form as performance indicator data, nevertheless, problem areas and corrective action information are available.

C. Inclusion of performance indicators in the ROP has not materially reduced the inspection scope or hours allocated to baseline inspections.

UCS argues that rulemaking is necessary to compel licensees to collect and submit PI data because, without such regulation, the NRC will be forced to conduct additional inspections to compensate for the missing information. UCS expresses concern that the NRC may not continue to have sufficient expertise or personnel to conduct these compensatory inspections if licensees do not submit PI data. (See Union of Concerned Scientists' Petition for Rulemaking, 66 Fed. Reg. at13269.) UCS's argument is predicated on the notion that such inspections would need to be vastly different in scope, frequency or resources allocated than current baseline inspections. This notion is incorrect in its entirety and, as to the resource allocation, has been directly contradicted by the ROP Initial Implementation Evaluation Panel's unqualified statement that "[t]he inspection resource expenditures are about the same under the ROP as under the previous inspection

program." (See Reactor Oversight Process Initial Implementation Evaluation Panel Report at 16.)

Under the ROP, the NRC conducts the same baseline inspection for each plant. The baseline inspection program was designed with PRA insights, operational experience, deterministic analysis and regulatory requirements in mind. Baseline inspections are focused on issues of greatest risk significance and those necessary to determine whether a ROP cornerstone objective has been met. Contrary to the proposition put forward in UCS's petition for rulemaking, i.e., that the inspection program was reduced to only confirmatory verifications in the areas covered by performance indicators, the scope of the current baseline inspection program closely tracks the subject areas covered by the previous inspection program (known as the "core" inspection program). The current baseline inspection program, however, applies more focus to systems and activities of greater risk-significance.

By gathering both performance indicators and the inspection findings, the NRC has recent information of adequate quantity and quality upon which to determine the level of inspection, which may be appropriate for a given plant. If there were no performance indicators, NRC still would be able to determine how to allocate additional inspection efforts using the results of the baseline inspection. We note that the PI and inspection finding results often are redundant, in that both the PI and inspection findings arise from the same performance weakness.

Further, early in the ROP's development, it was thought that the ROP would result in a net decrease in baseline inspection hours and thereby reduce regulatory burden and costs associated with such inspections. As is evident from the initial year of the ROP's implementation, baseline inspection hours have increased slightly. In this context we note that some plants which were viewed as top performers have received more inspection hours under the current baseline inspection program than under the previous core inspection program. To the extent that there has been some reduction in inspection burden, it is the result of supplemental regional inspections now being focused only on those plants whose performance has warranted additional attention.

D. Conclusion

In sum, the industry does not believe that the UCS petition demonstrates a need to initiate a rulemaking to amend the NRC's regulations to separately require licensees to report performance indicator data. Licensees have consistently demonstrated their willingness to voluntarily submit PI data and the first year of ROP implementation certainly affirms the industry's position. We further believe

that a separate requirement for reporting PI data would be largely duplicative of information collection and reporting requirements already in force. Finally, UCS's arguments that the baseline inspection program could not compensate for the failure to voluntarily submit PI data is incorrect because the current baseline inspection program, even with the inclusion of PIs, is of the same magnitude and scope as the previous core program. Therefore, the absence of PIs would not materially affect the NRC's ability to obtain the same data as underlies the PIs. For these reasons, we respectfully recommend that the NRC not initiate the proposed rulemaking.

Please call (202-739-8078) or email me at sdf@nei.org if you have any questions.

Sincerely,

Stephen D. Floyd

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