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March 25, 2002

David L. Meyer, Chief
Rules and Directives Branch
U.S. Nuclear Regulatory Commission
Mail Stop T-06 D59
Washington, D.C. 20555-0001

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RULES AND DIRECTIVES
DIVISION

RE: Comments Concerning NRC Draft Regulatory Guides for the Endorsement of Industry Code Cases

Dear Mr. Meyer:

The U. S. Nuclear Regulatory Commission ("NRC") published for comment three draft regulatory guides that will endorse code cases concerning various requirements in the American Society of Mechanical Engineers ("ASME") Codes (*i.e.*, *Operation and Maintenance Code* and *Boiler and Pressure Vessel Code*), and one draft regulatory guide that lists code cases that the NRC has determined are not acceptable for use. The draft regulatory guides, with reference to the applicable regulatory guide, are as follows:

- ?? DG-1089 (proposed new regulatory guide), "Operation and Maintenance Code Case Acceptability, ASME OM Code"
- ?? DG-1090 (proposed revision to Regulatory Guides 1.84 and 1.85, combined), Design, Fabrication, and Materials Code Case Acceptability, ASME Section III"
- ?? DG-1091 (proposed revision to Regulatory Guide 1.147), "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1"
- ?? DG-1112 (proposed new regulatory guide), "ASME Code Cases Not Approved for Use"

The Licensing and Design Basis Clearinghouse, a consortium of nuclear utilities that follows NRC activities related to licensing and design basis issues, appreciates the opportunity to comment on the above listed draft regulatory guides. Rather than comment on technical issues associated with the Code Cases, the Clearinghouse's comments concern the NRC's process for endorsement of ASME Code Cases. Specifically, the comments address the discussions in an NRC public meeting February 21, 2002, with the Nuclear Energy Institute's

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("NEI") Licensing Action Task Force ("LATF") concerning a more timely NRC review and approval of licensees' use of ASME Code cases that the NRC finds acceptable.

The NRC incorporates by reference¹ the ASME Codes for design, construction, installation, inservice inspection, and inservice testing of certain nuclear power plant structures, systems, and components in 10 C.F.R. § 50.55a, "Codes and Standards." Though the NRC and its predecessor – the Atomic Energy Commission – has relied upon the ASME Codes since early in its regulatory process, federal agencies' use of codes and standards was heightened by the National Technology and Transfer Act of 1995 (15 U.S.C. § 3701), and its companion guidance, Office of Management and Budget ("OMB") Circular A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and Conformity Assessment," to which the NRC committed through its Strategic Plan. ASME Code Cases provide alternatives to the Code requirements specifically identified in the code case.

Previously, the NRC endorsed ASME Code Cases through the issuance of regulatory guides without an opportunity for public comment. More recently, however, we understand that the Office of General Counsel determined that, because the code cases provide alternatives to the regulatory requirements in the ASME Codes, the process for accepting code cases must be generally consistent with the rulemaking process, which includes an opportunity for public comments before final agency action.² This current process necessarily delays NRC acceptance of the ASME Code Cases such that licensees must submit requests to use code cases as alternatives to the ASME Code requirements in the interim period from the time the ASME issues the code case to the time the NRC issues the regulatory guide revisions that indicate its acceptance.³

In the February 21, 2002, meeting, the LATF proposed that the NRC develop a method which would meet all of the regulatory process requirements, such as providing an opportunity for public comment, but would result in a more timely approval. The Licensing and Design Basis Clearinghouse supports improvements in the timeliness of the NRC's process, as suggested by the LATF.

¹ "Incorporation by reference" into an agency's regulations has the legal effect of treating the material so incorporated as if it were published in full in the *Federal Register* (see 5 U.S.C. 552(a)).

² The NRC Staff and a representative from the Office of General Counsel discussed this process in the NEI Licensing Information Forum, November 1, 2000 (Breakout Session C), in response to questions concerning the NRC's endorsement of ASME Code Cases.

³ The NRC and the ASME discussed this delay and suggestions for improving the process. See, e.g., M. Mayfield (NRC) to J. Ferguson (ASME), "ASME Letter Dated January 12, 2001, Regarding Endorsement of Code Cases," April 10, 2001.

The LATF discussed two possible options that the NRC could consider, as well as a parallel effort to amend 10 C.F.R. § 50.55a in a manner that would allow the use of an alternative approach, as necessary.⁴ For example, one possible alternative might involve the development of a web site where either (1) the individual code cases could be posted for public comment and for subsequent NRC acceptance (identifying any limitations or exceptions on the use of the code cases), or (2) revisions to the regulatory guides could be posted for comment each time the NRC proposes to endorse a code case. We believe that either method would allow individual code cases to be reviewed by the NRC, posted for public comment, and accepted for use by licensees within three to six months following the ASME publication of the code case, as compared to the three to five years between past revisions of the regulatory guides.

Improving the efficiency of the process to endorse ASME Code Cases would reduce the burden on both licensees and the NRC by reducing the number of requests from individual licensees seeking NRC approval of individual code cases. A new approach could provide generic approval earlier in the process, and, thereby, support the NRC goals for improving efficiencies in its regulatory processes.⁵ Process improvements would support the strategy in the NRC's Strategic Plan for improving efficiencies in its regulatory processes to "identify, prioritize, and modify processes based on effectiveness reviews to maximize opportunities to improve those processes."⁶

If you have any questions regarding our comments, please contact us.

Sincerely,

Original signed by Mark J. Wetterhahn

Mark J. Wetterhahn
Patricia L. Campbell
Counsel for the Licensing and Design
Basis Clearinghouse

⁴ We note that the Commission recently published a proposed rule to amend 10 C.F.R. § 50.55a. The footnote referencing regulatory guides, which endorse ASME Code Cases, would be deleted and the NRC will conduct rulemaking to incorporate revised regulatory guides into 10 C.F.R. § 50.55a. 67 Fed. Reg. 12,488 (March 19, 2002). Though such a process is aimed at improving efficiencies, other improvements, such as the use of a web site discussed herein, should also be considered.

⁵ NUREG-1614, Vol. 2, Part 2, "Strategic Plan," Appendix, Fiscal Year 2002 – Fiscal Year 2005.

⁶ *Id.*