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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

Attention: Rulemakings and Adjudications Staff

Re: NRC Proposed Rulemaking Concerning Fire Protection Programs

Dear Ms. Vietti-Cook:

The following comments address the NRC's proposed rulemaking regarding a voluntary alternative for implementing a risk-informed, performance-based fire protection program. The comments are submitted on behalf of the Nuclear Utility Backfitting and Reform Group ("NUBARG")¹ in response to the NRC's Notice of a Proposed Rule to adopt and incorporate by reference the National Fire Protection Association ("NFPA") Standard 805, "Performance-Based Standard for Fire Protection for Light-Water Reactor Electric Generating Plants, 2001 Edition" ("NFPA-805").² The NRC indicated that it considers the voluntary alternative to be a relaxation that would result in reducing the regulatory burden on licensees over the current deterministic approach. According to the NRC, this relaxation would allow licensees who elect to implement the alternative to focus their resources primarily on the most

¹ NUBARG is a consortium of utilities (representing a number of operating power reactors) which was formed in the early 1980s and actively participated in the development of the NRC's backfitting rule (10 C.F.R. § 50.109) in 1985. NUBARG has subsequently monitored the NRC's implementation of the backfitting rule and regulatory reform efforts, including risk-informed, performance-based activities.

² "Voluntary Fire Protection Requirements for Light Water Reactors; Adoption of NFPA 805 as a Risk-Informed, Performance-Based Alternative," 67 Fed. Reg. 66,578 (Nov. 1, 2002).

risk-significant fire protection equipment and activities.³ NUBARG has followed with interest the NRC's ongoing efforts associated with the proposed rulemaking, and supports this effort to provide an additional opportunity for licensees to implement an alternative that can reduce unnecessary regulatory burden.

NUBARG provides, herein, comments on the NRC regulatory analysis and reporting and recordkeeping estimates for implementing and maintaining the optional fire protection program. NUBARG notes that the Nuclear Energy Institute ("NEI") comments on the proposed rule raise similar concerns regarding the estimates for implementing the option.⁴

Comments Addressing NRC Regulatory Analysis⁵

The NRC guidance for performing a regulatory analysis involving the relaxation of requirements states two conditions that the regulatory analysis should address with "sufficient reasonableness."⁶ These conditions are:

1. the public health and safety and the common defense and security would continue to be adequately protected if the proposed reduction in requirements or positions were implemented; and
2. the cost savings attributed to the action would be substantial enough to justify taking the action.

NUBARG believes that the NRC has satisfied the first condition through its discussion in the regulatory analysis. However, the NRC regulatory analysis does not appear to satisfy condition

³ See SECY-02-0132, "Proposed Rule: Revision of 10 CFR 50.48 to Permit Light-Water Reactors to Voluntarily Adopt National Fire Protection Association (NFPA) Standard 805, 'Performance-Based Standard for Fire Protection for Light-Water Reactor Electric Generating Plants, 2001 Edition' (NFPA 805) as an Alternative Set of Risk-Informed, Performance-Based Fire Protection Requirements" (July 15, 2002), at 2.

⁴ See Memorandum to A. Vietti-Cook, NRC, from A. Marion, NEI, "Industry Comments on NRC Proposed Rule, 'Voluntary Fire Protection Requirements for Light Water Reactors; Adoption of NFPA 805 as a Risk-Informed, Performance Based Alternative,' 67 FR 66578" (Jan. 15, 2003).

⁵ SECY-02-0132, , *supra*, Att. 2, "Regulatory Analysis."

⁶ NUREG-BR-0058, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," Rev. 3 (July 2002), at. 6.

two in that it does not adequately demonstrate that the cost savings attributed to the action would be substantial enough to justify taking the action, particularly in comparison to the estimated costs to implement the requirements. The basis for our conclusion is discussed further below.

The NRC guidance also states that, while the action should give licensees the option of whether to take advantage of the change, calculation of the cost savings should be based on the assumption that all licensees will take advantage of the change.⁷ The regulatory analysis is inconsistent with this guidance. Though the regulatory analysis estimates that the one-time, plant-wide reanalysis of a plant's fire protection program, equipment, and procedures would cost approximately \$1M,⁸ it is unclear how the NRC utilized this cost in its overall regulatory analysis and how many plants were assumed to be impacted. In the regulatory analysis, the NRC neither estimates the number of licensees expected to implement the rule nor provides a total cost/benefit estimate if all licensees eventually elected to implement the rule.

The NRC subjectively states in the regulatory analysis that the selected alternative for the proposed rule would have "no potential to result in a net cost to licensees, and could have the potential to add net benefits."⁹ The claim that there is "no potential to result in a net cost to licensees" has not been quantified in the regulatory analysis and, as such, we do not believe that the Staff's subjective statement satisfies the intent of the second condition in NUREG-BR-0058 noted above. More specifically, the substantial cost savings standard has not been demonstrated.

Comments Addressing Reporting and Recordkeeping¹⁰

In addition to direct cost assessment, the NRC also is obliged to assess the costs of reporting and recordkeeping associated with the proposed action. Further clouding any net savings is the fact that, although the regulatory analysis estimates the cost for a licensee to perform a one-time reanalysis of a plant's fire protection program, the estimate does not appear to include the cost of reporting and recordkeeping burdens involved in implementing the optional fire protection program approach. In its statement to the Office of Management and Budget ("OMB"), the NRC discusses the new recordkeeping and reporting requirements that would be

⁷ *Id.*

⁸ Regulatory Analysis, *supra*, at 3.

⁹ Regulatory Analysis, *supra*, at 4.

¹⁰ "OMB Supporting Statement for Proposed Rule, 10 CFR Part 50, 10 CFR 50.48, 'Fire Protection,' Voluntary Adoption of NFPA 805 Fire Protection Requirements," 3150-0011.

imposed by the proposed rulemaking based on an assumption that 25 plants over a period of 10 years will implement the optional alternative.¹¹

For reporting and recordkeeping, the NRC estimates the net total licensee burden and cost increase to be \$28,697,150 per year (based on four reactor plants changing to NFPA 805 fire protection requirements per year and two licensees requesting to use alternative methods or analytical approaches per year, apparently for the estimated 10-year period).¹² As to the estimated recordkeeping burden reductions that could be achieved by licensees implementing the option, the NRC discussed that it "currently reviews 12 fire protection exemption or deviation requests each year for which licensees expend an average of 400 burden hours each."¹³ With this estimate of 4800 total burden hours, and using the NRC rate of \$156/hour, the total estimated cost savings for eliminating all of these requests would be approximately \$750,000/year. Without further explanation (e.g., the number of years in which this cost savings would be achieved), the estimated cost savings do not appear to offset the estimated reporting and recordkeeping burden that would incur for those licensees electing to implement to option.

Conclusions and Recommendations

The estimated level of reporting and recordkeeping burden that likely would be incurred by licensees who might elect to implement the option is significant. NUBARG suggests that with the estimated implementation and recordkeeping costs, and no clearly-defined burden reduction, licensees are not likely to implement the risk-informed, performance-based option. Moreover, the NRC has not demonstrated that the action is justified. In order for the NRC to satisfy its guidance for performing regulatory analyses for relaxations, NUBARG recommends that the Staff prepare more specific estimates on a single plant or total industry basis for both the implementation costs (including reporting and recordkeeping costs) and burden reductions that might be achieved by implementing the proposed rule. We note that with such a significant recordkeeping and reporting burden being imposed on those licensees who elect to implement the option, the NRC should also consider proposing a less burdensome, more efficient means of reporting and recordkeeping for implementing the optional alternative.

¹¹ *Id.*

¹² *Id.*, at 6. The NRC notes that there will be no additional costs to the Federal Government because the NRC review costs of licensee submittals will be fully recovered through fee assessments pursuant to 10 C.F.R. Parts 170 and 171. Of note, the cost estimates for reporting and recordkeeping requirements do not appear to be included in the regulatory analysis for the proposed rule.

¹³ *Id.*, at 8.

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Specific estimates addressing implementation costs are not only important for justifying the action in accordance with the NRC guidance for performing a regulatory analysis, but would be essential for licensees in considering whether to implement the option in the proposed rule. Additionally, NUBARG does not believe that the NRC would be justified in expending resources in the development or review of revisions to the referenced industry standard NFPA-805 (through participation in the NFPA standards activities) unless a majority of licensees may elect to implement the risk-informed, performance-based option.¹⁴

Please contact us if you have any questions.

Sincerely



Thomas C. Poindexter
Patricia L. Campbell
Counsel for NUBARG

PLC:sdd

cc: Charles Ader, NRC

¹⁴ See NRC Management Directive 6.5, "NRC Participation in the Development and Use of Consensus Standards" (Nov. 2, 1999).