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NUCLEAR ENERGY INSTITUTE

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Secretary
U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001

ATTENTION: Rulemakings and Adjudications Staff

SUBJECT: Comments on "Union of Concerned Scientists and Mothers for Peace; Receipt of Petition for Rulemaking" (68 Fed. Reg. 35585, dated June 16, 2003) [Docket No. PRM-50-80]

This letter provides comments of the Nuclear Energy Institute (NEI)[1], on the subject rulemaking petition.

The petition requests the NRC amend its regulations to require licensees to formally evaluate whether proposed changes, tests, and experiments cause protection against radiological sabotage to be decreased and to require an evaluation of intentional or accidental aerial hazards and make changes to ensure that the plant can reach and maintain safe shutdown. NEI believes both requests are not justified and NRC should deny the petition for rulemaking.

Changes to 10 CFR 50.59 and 50.54(p)

The petition requests NRC take two actions. The first request is to revise 10 CFR 50.59 and 10 CFR 50.54(p) to require plant owners to formally evaluate whether proposed changes, tests, and experiments cause protection against radiological sabotage to be decreased.

The purpose of 10 CFR 50.59 is to evaluate changes to the facility to determine if NRC approval is required prior to implementation. The term "facility" as used in §50.59 mean system, structures, and components described in the final safety analysis report. Conversely, §50.54(p) is focused on changes to a licensee plan for dealing with safeguard contingencies. It states that the licensee "...may make no

[1] NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including regulatory aspects of generic operational and technical issues. NEI 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, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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change which would decrease the effectiveness of a security plan, or guard training and qualification plan, prepared pursuant to ..."

In our view, each regulation has a distinct purpose and to do as the petitioners suggest provides no value added.

The petitioners state that degraded conditions and off-normal configurations are often deemed acceptable from a safety evaluation perspective because of low probability that an initiating event will occur during the brief period of impairment. However, the petitioners assert that that same impairment, from a radiological perspective may be unacceptable because the initiating event for sabotage is not random.

While the likelihood of sabotage is not random, 10 CFR Part 73 requires licensees to have a security plan and contingency plan in place to ensure protection against radiological sabotage. Changes to the plan are evaluated under §54.54(p) to ensure effectiveness is not reduced. The appropriate questions to ask to determine impact on effectiveness are necessarily different from those asked in a §50.59 safety evaluation.

Inherent in the petitioner's request is the presumption that the security plan is not effective and that radiological sabotage will always occur. If this were true, then the plant being in a degraded condition or in an off normal configuration may have relevance; but, since the assertion is not accurate the plant condition is irrelevant. There is no direct correlation between security plan effectiveness and plant condition.

It is important to note that, as allowed by 10 CFR 50.59 (c) (4), other 'change' regulations may be applied to the activity if more appropriate. However, the petitioner is incorrect in believing that the application of other regulations is to the exclusion of 10 CFR 50.59 criteria. As discussed in NEI 96-07, "Guidelines for 10 CFR 50.59 Implementation," Revision 1, Section 4.1.1, all applicable regulations must be applied to an activity. NEI 96-07 states, "However, there may be certain activities for which a licensee would need to apply both the requirements of 10 CFR 50.59 and that of another regulation. For example, a modification to a facility involves additional components and substantial piping reconfigurations as well as changes to protection system setpoints. The protection system setpoints are contained in the facility technical specifications. Thus, a license amendment to revise the technical specifications under 10 CFR 50.90 is required to implement the new system setpoints. 10 CFR 50.59 should be applied to the balance of the modification, including impacts on required operator actions." This reasoning as it applies to fire protection is reiterated in section 4.1.5 of NEI 96-07, "Changes to the fire protection program should be evaluated for impacts on other design functions,

and 10 CFR 50.59 should be applied to the non-fire protection related effects of the change, if any." Therefore, the guidance does not allow for exclusion of integrated impact of an activity. If a change to the security plan, evaluated pursuant to §50.54(p), impacts a plant design function, that change should also be considered under 10 CFR 50.59. Similarly, if a change to a system, structure, or component somehow impacts the security of the plant, §54.54(p) should be exercised. To require this "dual" review, however, for each and every facility change is unnecessary and provides no added benefit.

Evaluation of Aerial Hazards

The petition's second request is to require all licensees to formally evaluate their facilities against specified aerial hazards. Further, the petitioner's request that NRC require licensees to make facility changes as necessary to provide reasonable assurance that the ability of the facility to reach and maintain safe shutdown would not be compromised by an aerial assault.

The petitioner's do not agree that nuclear power plants are hardened facilities, citing a 20 year old study that concluded "The control building is the only single building which if hit, could lead to core melt." Once again the petitioner's make the assumption that all lines of defense fail and that a hit on the control room will result in core melt.

Since the horrific attacks of September 11, 2001, no fly zones have been established around nuclear power plants as noted in the petition. However, the Federal Aviation Administration and other Federal agencies have taken additional actions. Regardless, the federal government is responsible for protecting the nation's critical infrastructure, including nuclear power plants, from aircraft attacks.

Also, the industry has completed a study entitled "Risk Characterization of the Potential Consequences of an Armed Terrorist Ground Attack on a U.S. Nuclear Power Plant." This study concludes that "Should core damage and radiological release occur, the public health consequences are not catastrophic. The mean number of prompt fatalities is estimated to be about two, and the mean number of latent cancer fatalities are estimated to be less than 100, which is indistinguishable compared to cancer fatality risks without the event." This conclusion does not support the need to conduct extensive aircraft impact analyses and we recommend NRC deny the petitioners request.

Conclusion

Based on the issues discussed above, NEI requests the NRC deny the petition for rulemaking that would revise 10 CFR 50.59, 50.54(p) and require additional analysis of design.

Sincerely,

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