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Marvin S. Fertel
SENIOR VICE PRESIDENT
AND CHIEF NUCLEAR OFFICER

April 30, 2004

The Honorable Nils J. Diaz
Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Chairman Diaz:

The NRC staff submitted for your approval a proposal for a final risk-informed, performance-based fire protection rule. This rule provides an opportunity for licensees to better focus future program improvements in areas where there is a demonstrated safety impact. NEI has worked with NRC staff over several years to draft a rule and implementing guidance that addresses both staff and industry goals. We encourage your approval of the rule and encourage expeditious staff approval of the implementing guidance.

Licensees will need to carefully consider the merits and cost-benefit of making a transition from the existing fire protection licensing basis of nearly 20 years' duration to a new and untested regulatory framework. An optimized transition path that meets regulatory goals and facilitates licensee implementation is desirable. As you consider the staff's proposal, we offer a few important points related to this transition. The most important points are discussed briefly below while additional detail on these and other points are provided in the enclosure.

1. Requirement for a license amendment to utilize performance-based alternatives to NFPA 805 Chapter 3 methods

Comment Summary: Industry proposes that topical reports, referenced by licensees, be acceptable as an alternative to license amendments for adopting performance-based alternatives to Chapter 3 methods proposed in the SECY. Use of the license amendment process for considering alternatives could become a significant burden on industry and staff resources because of the large number of methods (all deterministic) in Chapter 3, and the number of licensees that potentially will adopt this rule. Provisions for NRC approval of topical reports would alleviate this burden, and would be consistent with the staff provision in the SECY for using topical reports for the use of PRA and

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fire modeling.

2. Granting of enforcement discretion during the period until the licensee has transitioned to 10 CFR 50.48(c)

Comment Summary: Industry agrees with the staff that granting enforcement discretion for noncompliances during the period until the licensee has transitioned to 10 CFR 50.48(c) is appropriate. Allowing licensees a suitable amount of time to adopt a risk-informed licensing structure will help resolve current regulatory issues in a safety-focused manner that maintains compliance. We also agree that these current issues should meet the criteria described in the SECY to qualify for this provision.

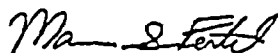
3. Resource estimates for licensee implementation of the rule change

Comment Summary: The dollar and man-hour estimates for licensee implementation should be lowered to reflect the experience gained during the industry evaluation of the implementing guidance for this rule. Licensees will be less likely to make this transition if the costs are perceived to be too high.

We look forward to the completion of the rule and staff approval of the implementing guidance NEI will submit after the rule is final.

If you have any questions, please call me directly at 202-739-8125, or Mr. Alex Marion, Senior Director, Engineering, at 202-739-8080.

Sincerely,



Marvin S. Fertel

Enclosure

- c: The Honorable Edward McGaffigan, Jr., Commissioner, NRC
The Honorable Jeffrey S. Merrifield, Commissioner, NRC
Dr. William D. Travers, Executive Director for Operations, NRC
Samuel J. Collins, Deputy Executive Director for Reactor Programs, NRC
James E. Dyer, Director of the Office of Nuclear Reactor Regulation, NRC

Enclosure

Comments on SECY 04-0050

1. Page 3, Public Comments on the Proposed Rule: The staff determined that performance-based alternatives to the program elements and minimum design requirements of NFPA 805 Chapter 3 require a license amendment prior to implementation.

Comment: Another method for implementing these performance-based alternatives is by submittal of a topical report for staff approval describing the alternative. Licensees would then be able to reference the topical report and demonstrate that the report addresses their particular application without the formal submittal of a license amendment for each application. The licensee would retain the documentation for future NRC inspection. This is consistent with the current process for NRC review of generic topical reports.

The NRC staff states in the SECY that license amendments would not be required to use fire modeling or PSA analyses to comply with NFPA 805. This addressed the Commission direction in the SRM to SECY 02-0132 regarding the use of methods not in NFPA 805. If NRC approves a topical report pertaining to a particular performance-based method as an alternative to a Chapter 3 method, this approved method should be treated in the same fashion as for fire modeling and PSA methods. Licensees should be able to utilize it without prior staff approval and retain the documentation for its use at the site.

Implementation of this approach would potentially provide a significant saving of NRC resources that would otherwise be spent on reviewing license amendments from multiple utilities for the application of the same alternative.

2. Page 4, Enforcement Considerations: A provision is made for granting enforcement discretion for noncompliances during the period until the licensee has transitioned to 10 CFR 50.48(c).

Comment: The stated provision is appropriate. It will allow licensees a suitable time to adopt a risk-informed licensing structure and provide an opportunity to tailor risk-informed solutions to identified issues with a continuing focus on safety.

3. Page 5, Consideration of Other Rulemakings: The staff notes that the rulemaking on post-fire manual actions may impact licensees adopting 10 CFR 50.48(c) if that rulemaking is made applicable to those licensees.

Comment: The staff should maintain cognizance of the risk-informed, performance-based approach contained in 10 CFR 50.48(c) and avoid creating unintended consequences to plants adopting 10 CFR 50.48(c) as a result of the pending rulemaking on manual actions. The manual actions rulemaking is deterministic in nature and should be applicable only to licensees using the deterministic approach for identifying the fire protection systems and features required to achieve the NFPA 805 performance criteria. Section 4.2.4 of NFPA 805 allows the use of recovery actions in the performance-based approach. The manual actions rulemaking shouldn't conflict with the intent of that provision.

4. Attachment 1, page 18: The SECY states, "NFPA 805, Chapter 1, states the radioactive release performance criteria to maintain radiation release from the effects of fire as low as reasonably achievable and not to exceed 10 CFR Part 20 limits." [emphasis added]

Comment: NFPA 805, Chapter 1, Section 1.5.2, actually states "Radiation release to any unrestricted area due to the direct effects of fire suppression activities (but not involving fuel damage) shall be as low as reasonably achievable and not exceed applicable 10 CFR, Part 20, limits." [emphasis added] The staff's intent should be clarified since "the effects of fire" are not the same as "the effects of fire suppression activities."

5. Cost Estimates: Attachment 1, page 29, *Licensee Impact*, states that the analysis required by the licensee to adopt 10 CFR 50.48(c) is 11,250 person-hours. The same estimate is provided on page 32 of this attachment. On page 48 the estimate is 11,290. On page 3 of Attachment 2, *Regulatory Analysis*, Section 6, the dollar cost is estimated at \$1.68 million for each facility.

Comment: We believe the NRC staff estimates are too high by a factor of 3 to 10, and do not reflect the industry estimate of 1,200 to 3,800 man-hours for the transition. The industry estimate was developed during the pilot evaluation of the NEI implementing guidance conducted at a nuclear plant in 2003. The range in the industry estimate reflects a broad spectrum of plants, not just those that are well-positioned for making the transition to a new licensing basis. The industry estimate does not reflect the resources required to develop a fire PRA, since this is not required in order to comply with NFPA 805.

We are concerned that the high NRC estimate could discourage licensees from adopting the new rule. We recommend that the Commission request the staff to reconcile their estimates with those from the industry pilot evaluation.



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Cover Sheet

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Pages including cover sheet: 6

Comments: