



NUCLEAR ENERGY INSTITUTE

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July 6, 2006

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Nuclear Energy Institute Comments on Division of High-Level Waste Repository Safety (HLWRS) – Draft Interim Staff Guidance (ISG)-01, *Review Methodology for Seismically Initiated Event Sequences*, 71 Federal Register 29369, May, 22, 2006

PROJECT NUMBER: 689

Dear Mr. Shah:

The Nuclear Energy Institute (NEI)¹, on behalf of the nuclear energy industry, is pleased to comment on the Division of High-Level Waste Repository Safety (HLWRS) – Draft Interim Staff Guidance (ISG)-01, which provides proposed revisions to NRC staff review guidance by specifying the review methodology for seismically initiated event sequences under 10 CFR Part 63. Specifically, the proposed guidance presents NRC staff's expectations for complying with the performance objectives of 10 CFR 63.111 as it relates to seismically initiated event sequences.

Industry commends HLWRS for providing an opportunity for public comment on this draft guidance. It is important to assuring a sound and predictable regulatory process that NRC provides opportunities for public input to all draft regulations and regulatory tools.

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, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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On July 1, 2006, NRC Chairman Dale E. Klein said that regulatory stability is a crucial element in ensuring that NRC can complete its work in a timely manner. Unfortunately, HLWRS ISG-1 has the potential to create regulatory instability. Accordingly, we encourage NRC to take advantage of the opportunity afforded by this comment period to reconsider issuing this ISG and to instead address the issue of seismically initiated event sequences, more appropriately, in the Yucca Mountain Review Plan. Industry is recommending this course of action for the following five reasons:

- First, in general, Interim Staff Guidance is not the most effective means for NRC to clarify its regulatory intent and could lead to unforeseen consequences due to inadequate review (including not being reviewed by the Commission itself).
- Second, “interim” guidance, using a vehicle that was meant to address emerging issues affecting multiple licensed activities, is unnecessary in a situation where there is only a single potential licensee that is not currently conducting any licensed activities.
- Third, draft HLRWS ISG-1 lacks safety-focus in that it sets forth a more stringent standard for the seismic design of repository surface facilities than currently exists for reactors without recognizing the comparatively lower level of risk associated with the repository facilities. In doing this, HLRWS ISG-1 directly contradicts the very regulation (10 CFR Part 63) that it seeks to inform.
- Fourth, providing guidance to staff that assumes a specific methodology for demonstrating compliance with 10 CFR 63.111 is likely to bias the staff’s review against other methodologies that DOE may propose that provide equal or better protection of public health and safety. Furthermore, giving DOE the opportunity to first propose an acceptable method for meeting the regulation would allow for a more independent review on NRC’s part – avoiding a situation where NRC is both telling DOE how to demonstrate compliance and then determining if compliance was demonstrated as instructed.
- Fifth, the specific methodology proposed in this draft ISG lacks both precedent and scientific support.

The basis for each of these concerns is explained in greater detail in the enclosure to this letter. We strongly urge NRC to give all due consideration to these comments

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and reconsider this draft. To facilitate a constructive dialogue toward this end, we request an opportunity to meet with you, at your earliest convenience, to discuss this issue further.

If you have any questions regarding the above concerns, please do not hesitate to contact me at (202) 739-8116; spk@nei.org.

Sincerely,



Steven P. Kraft

Enclosure

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