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**FPLEnergy.**

**Duane Arnold Energy Center**

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U.S. Nuclear Regulatory Commission  
Attn: Document Control Desk  
Washington, D.C. 20555-0001

Duane Arnold Energy Center  
Docket 50-331  
License No. DPR-49

Affirmation of Letter of Intent to Transition to 10 CFR 50.48(c) – National Fire Protection Association Standard NFPA 805, "Performance-based Standards for Fire Protection for Light Water Reactor Electric Generating Plants," 2001 Edition

Reference: Letter from Nuclear Management Company (NMC) to NRC, Letter L-HU-05-023, dated November 30, 2005 (Adams Accession Number ML0503460342)

On November 30, 2005, NMC transmitted its letter of intent to transition to the performance based fire protection rule contained in 10 CFR 50.48(c). This letter included a statement of intent to transition the Duane Arnold Energy Center (DAEC) to 10 CFR 50.48(c). Due to the pending plant sale, no schedule for the DAEC transition was provided.

This letter affirms FPL Energy's intent to transition the DAEC to the performance based standard for fire protection and provides a schedule for the implementation of the transition.

The transition to the performance based standard for fire protection has commenced and is expected to take 42 months, from the date of this letter, to develop the License Amendment Request (LAR). This proposed schedule is subject to change depending on the progress of the NFPA 805 pilot plants and the extent to which DAEC determines the need for either physical modifications or changes to the fire protection program to comply with NFPA 805. An updated transition schedule will accompany the LAR required under 10 CFR 50.48(c)(3)(i).

In accordance with the NRC Enforcement Policy section titled, "Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fire Protection Issues" (10 CFR 50.48), FPL Energy is requesting enforcement discretion for existing identified noncompliances and noncompliances identified during the transition process.

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For reasons stated below, FPL Energy requests an enforcement discretion window of greater than three years.

- (1) FPL Energy is currently performing a major fire protection improvement project, including revision of the Appendix R analysis, revision of the fire barrier evaluations, and update of the Fire Hazards Analysis at DAEC. The completion of this project is required for the transition to NFPA 805.
- (2) Due to changes in regulations and standards over the years, noncompliances may be identified as FPL Energy transitions to NFPA 805. The requested enforcement discretion window should ensure that FPL Energy can perform a thorough investigation of the extent of condition at DAEC.
- (3) FPL Energy anticipates that the majority of the plant fire areas will transition using the deterministic methodology of NFPA 805. Currently there is no guidance in NEI 04-02 or the draft transition Regulatory Guide on the deterministic transition.
- (4) Within FPL Energy, or within the nuclear industry, there is a limited population of fire safe shutdown experts needed to support the update and validation of the revised post fire safe shutdown analysis.
- (5) FPL Energy is coordinating this effort within the FPL fleet to better utilize the limited fire protection resources available.
- (6) Finally, FPL Energy believes that the risk of granting the requested enforcement discretion window is low, since noncompliances for which FPL Energy would request enforcement discretion must meet the requirements of the Interim Enforcement Policy. The Interim Enforcement policy applies only to those findings that are not characterized as safety significant.

FPL Energy understands that this letter, by reaffirming the November 30, 2005 NMC Letter of Intent, initiates a window of enforcement discretion for DAEC, during which no enforcement actions will be taken by the NRC for non-safety significant noncompliances, subject to the guidance provided in the Interim Enforcement Policy.

The NRC Interim Enforcement Policy provides that as a condition of eligibility to enforcement discretion, "Licensees will perform a plant-wide assessment to identify fire area and fire hazards and evaluate compliance with their existing fire protection licensing basis." FPL Energy is in the process of performing this evaluation during the fire protection improvement project currently underway.

The NFPA Transition Process will proceed in four phases:

Phase 1 – Completion of the fire protection improvement project, which will improve the documentation of the approved fire protection program as required to support the transition evaluation.

Phase 2 – Technical and regulatory assessments to determine the feasibility and practicality of performing the transition.

### Phase 3 - Reviews and Engineering Analysis

- Completion of PRA
- Fundamental Fire Protection Program and Design Element Review
- Nuclear Safety Performance Criteria Transition Review
- Non-Power Operational Mode Transition Review
- Radiological Release Transition Review
- Change Management Evaluations
- License Amendment Request

### Phase 4 – Implementation

- Program Documentation
- Configuration Control
- Monitoring

FPL Energy will consider this transition to be completed upon receipt of the License Amendment authorizing the transition to 10CFR50.48(c).

The NRC Interim Enforcement Policy provides guidelines for enforcement discretion for identified non-compliances. Those non-compliances must be entered into the licensee's Corrective Action Program, must not be associated with findings that the Reactor Oversight Process Significance Determination Process (SDP) would evaluate as Red, or would not categorize at a Severity Level 1, and appropriate compensatory measures have been taken (non-safety significant). As outlined in the NRC Interim Enforcement Policy, enforcement discretion begins with the licensee's letter of intent.

This letter contains no new commitments.

Please contact Steve Catron at 319/851-7234 if there are any questions.



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cc: Administrator, Region III, USNRC  
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