



NUCLEAR ENERGY INSTITUTE

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July 16, 2007

Mr. Patrick M. Madden
Deputy Director
Division of New Reactor Licensing
New Reactors Office
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Industry Proposal for FSAR Section 13.7, Fitness for Duty Program

Project Number: 689

Dear Mr. Madden:

The in-progress amendment to NRC's 10 CFR Part 26 Fitness for Duty (FFD) regulations and the prescriptive nature of those regulations present a unique situation concerning compliance by near term combined license (COL) applicants with the 10 CFR 52.79(a)(44) requirement for a FFD program description in the FSAR. The purpose of this letter is to put forward the industry's proposed approach to the requirement for an FFD program description in the FSAR and request a public meeting at the earliest opportunity to discuss it.

As indicated in the enclosure, we believe the required FSAR Section 13.7 description of the FFD Program can be very brief. This is because current Part 26 contains uniquely prescriptive FFD requirements for both the construction and operational phases. The amended Part 26 requirements will be even more prescriptive, at least for the operational phase. Indeed, SECY-06-0244 on the Part 26 final rulemaking states, "By intent, the detailed nature of the drug and alcohol testing provisions in the final rule obviates the need for a guidance document for those provisions applicable to operating plants." We believe the prescriptive rule language provides sufficient description to satisfy the 10 CFR 52.79(a)(44) COL application requirement for an FFD program description in the FSAR. Thus, it is not necessary and would not be an effective use of resources for industry to develop – or for NRC to review – a redundant FSAR description of FFD program, policies or procedures.

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Once the pending amendment to Part 26 takes effect, we expect that COL applicants will wish to take advantage of proposed Subpart K, which provides FFD requirements appropriate to the construction phase. Because Subpart K is much less prescriptive than Part 26 requirements for the operations phase, COL applications submitted before the revised Part 26 takes effect would need to be amended to include a description of construction phase FFD consistent Section 52.79(a)(44). To support these amendments and subsequent COL applications, we plan to develop and submit to the NRC revised language for FSAR Section 13.7 that will reference industry guidance also being developed, NEI 06-06, *Fitness for Duty Program for New Nuclear Power Plant Construction Sites*.

Consistent with implementation guidance in SECY-06-0244, we intend to continue to work with the staff in the development, review, and endorsement of NEI 06-06. Our objective is generic guidance suitable to reference in FSARs and sufficient to support an NRC staff reasonable assurance finding in the COL concerning the FFD Program during construction.

We would like to discuss the acceptability of this approach and the generic language proposed in the enclosure for FSAR Section 13.7 in a public meeting at the earliest opportunity. We will contact you shortly to arrange such a meeting.

If you have any questions, please contact Chris Earls at (202) 739-8078; cee@nei.org, or me.

Sincerely,



Russell J. Bell

Enclosure

c: Mr. Glenn M. Tracy, NRC
Mr. Scott A. Morris, NRC
Mr. Douglas G. Huyck, NRC
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Proposed FSAR Section 13.7, Fitness for Duty

A Fitness for Duty (FFD) program is implemented and maintained to meet the requirements contained in 10 CFR Part 26. The FFD program complies with the FFD requirements contained in 10 CFR Part 26 at the new plant construction site during both the construction and operating phases of the nuclear unit. This program will be implemented at the new plant construction site prior to construction of safety- or security-related structures, systems, and components.