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Mr. David B. Matthews
Director, Division of New Reactor Licensing
New Reactors Office
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: NEI 06-06, *Fitness for Duty Program Guidance for New Nuclear Power Plant Construction Sites*, Revision 2

Project Number: 689

Dear Mr. Matthews:

Enclosure 1 provides NEI 06-06, *Fitness for Duty Program Guidance for New Nuclear Power Plant Construction Sites*, Revision 2, for NRC review and endorsement. This revision updates Revision 1 of the guideline sent to you on September 14. It reflects changes that were made in response to staff comments in a November 13, 2007, public meeting as well as additional industry input.

The industry has developed this document to provide guidance for the construction phase Fitness for Duty (FFD) Program using the proposed new Subpart K of 10 CFR Part 26, which is expected to take effect early next year. We understand that the staff plans to reference and endorse NEI 06-06 in a regulatory guide on implementing the new Subpart K.

NEI 06-06 describes only the random drug and alcohol testing and behavioral observation program option of Subpart K. All references to the fitness monitoring option have been removed since this option has not been developed yet. If this option is developed in the future, a new revision will be submitted to the staff for review and endorsement.

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While enclosure 1 is expected to resolve the vast majority of the NRC comments on NEI 06-06, one significant issue remains unresolved and warrants senior management attention: the random drug and alcohol test rate for construction workers. As discussed on November 13, 2007 and December 13, 2007 and in the NRC-NEI New Plant Working Group meeting on December 13, 2007, we disagree with the staff's position that a 100 percent random drug and alcohol testing rate for construction workers is necessary or appropriate.

The rate of testing is higher than the 50 percent random test rate required for operating plants, including transient outage workers, where the immediate consequences of a drug or alcohol related error is significantly higher than during construction. Also, the rate of testing is higher than the random test rate required by new Part 26 for new plant construction personnel that have critical management and oversight responsibilities; and higher than the rate required by new Part 26 for new plant construction workers if licensees choose not to apply optional Subpart K.

A 100 percent random test rate would run counter to the purpose of Subpart K, which, as described in SECY-06-0244 on the final FFD rule, is to provide FFD requirements for construction workers that are more flexible than for operating plant personnel and less stringent than requirements for new plant construction personnel in critical oversight responsibilities.

We continue to believe that a 25 percent random testing rate is a sufficient deterrent to drug and alcohol abuse among construction workers and is appropriate considering:

1) The absence of radiological risk during the construction phase,
2) The effectiveness of pre-access and for-cause testing, which accounted for 84 percent of positive tests in 2006 (compared with only 13 percent identified by random testing),
3) For cause testing, behavioral observation, and other elements of the FFD Program, and
4) Quality assurance and quality control activities and extensive pre-service and start-up inspection and testing activities that assure the construction work has been correctly performed and the plant is ready to commence operation.

We do agree with the NRC staff on the need to reevaluate the testing rate after some time period and have modified NEI 06-06 to allow for the initial random test rate to be modified if the rate of positive test results is above or below one percent over a two year period. Enclosure 2 provides additional basis for the industry position.

Our goal is two-fold: 1) to complete NEI 06-06 in a manner that achieves NRC endorsement without exception; and 2) to support expected issuance in March 2008 of the final FFD rule. Given the importance of this issue, we agree that it should be resolved by NRC senior management.

If you have any questions regarding NEI 06-06, please contact Chris Earls at (202) 739-8078; cee@nei.org or me.

Sincerely,

Adrian P. Heymer

Enclosures

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