



NUCLEAR ENERGY INSTITUTE

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June 6, 2008

Mr. Melvyn Leach
Director, Division of Preparedness and Response
Office of Nuclear Security
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: March 5, 2008 Public Meeting on Emergency Preparedness Draft Preliminary Proposed Rule Language—Industry Review, Recommendations and Questions

Project Number: 689

Docket Number: NRC 2008-0122

Dear Mr. Leach:

The Nuclear Energy Institute (NEI)¹ appreciates the opportunity to provide the U.S. Nuclear Regulatory Commission (NRC) with early feedback on the emergency preparedness draft preliminary rulemaking (EPDPR) process.

We understand that the purpose of the EPDPR is to enhance emergency preparedness (EP) regulations based on a review of EP regulations and guidance following the terrorist events of September 11, 2001, and to codify certain requirements already implemented through commission orders and NRC bulletins.

Based on discussions during the March 5 meeting, NEI has several concerns regarding the current direction of the EPDPR process.

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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- It appears that there is lack of consensus on the part of the NRC staff (the staff) concerning several aspects of the rulemaking.
- Some staff proposals takes the regulatory process beyond requirements the commission has imposed through orders and bulletins.

NEI believes that the EPDPR may not have been fully vetted through NRC management. No one above the branch chief level in the NRC Office of Nuclear Security and Incident Response (NSIR) attended the public meeting. As a result, NRC management missed an opportunity to participate in staff, industry and non-governmental organizations interactions first hand.

During the meeting, industry representatives engaged the staff on the 11 EPDPR recommendations. Enclosure 1 discusses each of the staff goals as presented at the March 5 meeting; industry questions asked; NEI's understanding of the staff's response; and the industry's position and recommendation on each EPDPR topical area, where applicable.

The industry comments in several of these areas are preliminary because ongoing national studies have a strong bearing on the issues and outcomes. These studies should be completed and their results used to inform the rulemaking language. Examples include the state-of-the-art reactor consequence analyses (SARCA), the revision of NUREG-0654/FEMA REP-1 Supplement 3 Protective Action Guidelines, and the presidential directive to develop a national standard for alert and notification systems.

On March 20, 2008, Dennis Schrader of the Federal Emergency Management Agency and Roy Zimmerman of the, NRC, signed a letter of intent to engage stakeholders on draft preliminary changes to radiological emergency preparedness exercise guidance. This letter agrees to conduct multiple regional focus groups and public meetings to provide an opportunity to solicit stakeholder comment as well as alternative proposals. The four focus groups conducted to date yielded preliminary insights and recommendations that are contrary to the EPDRP language. It is imperative that FEMA guidance and NRC rulemaking be in alignment.

New regulations must be developed in a deliberate manner with the benefit of the FEMA focus group results and the latest technical information from the national studies supporting post-September 11, 2001, enhancements. This approach will yield the greatest enhancement for public health and safety. Therefore, we strongly recommend that the NRC put the rulemaking effort on hold until the focus group discussions, public meetings and relevant national studies have been completed, and the results analyzed by the staff.

On a related topic, a notice in the Federal Register (FR) Vol. 73, No. 70, April 10, 2008, page 19443, proposes to add new provisions regarding licensee procedures for responding to notifications of potential aircraft threat and for mitigating the loss of large areas of their facilities as a result of large

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fires or explosions. These new provisions are proposed for 10 CFR Part 50.54(hh) (aircraft threat rule).

NEI has reviewed this FR notice and has identified a number of crosscutting issues (Enclosure 2) between the EPDPR and the aircraft threat rule that should be evaluated by NSIR. Rulemaking efforts in this area should be consolidated or at a minimum where appropriate in 10 CFR Part 50.54(hh) where emergency preparedness requirements exist, a reference back to the appropriate section of Appendix E be provided.

NEI appreciates the staff's efforts to seek informed stakeholder input during the preliminary proposed rule time frame. NEI expects that final Draft Proposed Rulemaking will require backfit justification. In that regard, we would like to meet with the staff to discuss clarifications and numerous recommendations in Enclosures 1, 2 and to provide comments on the staff backfit justification.

If you or your staff have any questions, please contact me at (202) 739.8110; apn@nei.org or Marty Hug at (202) 739.8129; mth@nei.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan Nelson", with a stylized flourish at the end.

Alan P. Nelson

Enclosures

c: Mr. Christopher Miller, NRC
Mr. James Kish, FEMA
NRC Document Control Desk