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July 11, 2008

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

Subject: Categorization of Activities under the Limited Work Authorization Rule

Project Number: 689

Dear Mr. Matthews:

This letter provides the industry's rationale for the categorization of preconstruction and construction activities as defined in the Limited Work Authorization rule. The enclosure to this letter provides some of the examples that were discussed in a recent NRC public meeting along with others that illustrate the industry's categorization rationale based on the criteria provided in the rule. We strongly recommend that these examples be included in any subsequent revision to the interim staff guidance to provide additional clarification on the categorization of construction activities as defined in the rule.

The industry agrees with statements in the Supplementary Information to the rule, "[T]he determination of SSCs which do not have a reasonable nexus to radiological health and safety or common defense and security depends on the design of the facility." *72 Fed. Reg.* 57429. It is important that the interim staff guidance and subsequent regulatory guidance explicitly recognize this degree of regulatory flexibility. Also, the Supplementary Information clearly links the categorization of construction activities to a direct and reasonable nexus to public health and safety and common defense and security.

We do not believe that it is necessary to change the rule language or the Supplementary Information. In addition, we agree that the interim staff guidance is generally consistent with the rule and requires adjustment in only two areas. The first is the additional clarification that would be provided by the examples listed in the enclosure. The second is in the area of site redress, and we understand that the NRC staff is already taking action to address this second issue as described in the NEI letter dated May 8, 2008.

Mr. David B. Matthews

July 11, 2008

Page 2

The industry recognizes that although the NRC does not have jurisdiction over activities that are not defined as construction, there may be a need to apply for local, state or other federal agency approvals. An example is the Intake Structure that does not have a direct nexus to radiological health and safety. No matter the categorization, the environmental impact of the structure and the inflow and outflow of the water will be addressed in an applicant's environmental report.

We request rapid feedback on this letter because of the significant impact on several of the nine combined license applications under NRC review and the additional applications that will be submitted in the next three to eight weeks.

The intensity and decision-making process associated with this issue provides an example of what can be achieved through public interactions on generic matters that are linked to on-going licensing reviews. If you have any questions, please contact me.

Sincerely,



Adrian P. Heymer

Enclosure

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