



NUCLEAR ENERGY INSTITUTE

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October 28, 2008

Mr. John A. Grobe
Associate Director for Engineering and Safety Systems
U.S. Nuclear Regulatory Commission
Mail Stop O13 D-13
Washington, DC 20555

Subject: Clarification of the Enforcement Discretion Policy, as related to the License Amendment Proposal for Plants Transitioning to 10 CFR 50.48(c).

Project Number: 689

Dear Mr. Grobe:

The Nuclear Energy Institute (NEI) is requesting clarification of the NRC's recently revised "Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fire Protection Issues" (73 Fed. Reg. 52705; September 10, 2008 (Interim Policy)). Specifically, NEI requests clarification of whether the NRC will exercise enforcement discretion with respect to existing identified non-compliances, and non-compliances identified during the 10 CFR 50.48(c) transition process, in the event that a license amendment request (LAR) submitted pursuant to 10 CFR 50.48(c) is rejected (without an opportunity to resubmit) or denied by the NRC staff.

While the Interim Policy does not directly address this scenario, we are concerned that, going forward, the enforcement discretion period would end if an LAR is rejected (without an opportunity to resubmit), or is denied. [See 73 Fed. Reg. 52705 ("The discretion period would continue until the NRC dispositioned the LAR.") and 73 Fed. Reg. 52706 ("The enforcement discretion will continue to be in place, without interruption, until NRC approval of the license amendment request to transition to 10 CFR 50.48(c).].

NEI believes that an approach, similar to the one explained in the Interim Policy for situations where a Letter of Intent is withdrawn by a licensee, would also be appropriate in the case of a rejection or denial of an LAR (73 Fed. Reg. 52706). Specifically, in the event of a rejection or denial, NEI suggests that the NRC, as a matter of practice, should not take enforcement action against existing identified non-compliances, or non-compliances identified during the 10 CFR 50.48(c) transition process that were either corrected during the transition process or where reasonable and timely

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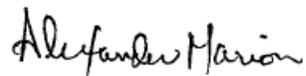
corrective actions are in progress. In addition, if a licensee intends to resubmit the LAR after addressing the cause of the rejection, enforcement discretion should not be affected (i.e., remain in force throughout the time necessary to submit the revised LAR) as long as the re-submittal occurs within a timeframe acceptable to the NRC.

NEI and the nuclear industry remain committed to gaining insights through participation the ongoing NFPA-805 pilot process to ensure that high quality LARs are submitted in a stable and predictable regulatory environment. This effort should minimize the likelihood of rejection or denial of an LAR, however it is important that licensees who decide to transition to the risk-informed approach to fire protection provided in § 50.48(c) understand the potential consequences of a rejection or denial. Therefore, NEI respectfully requests clarification of this issue.

Additionally, in its September 10, 2008, federal register notice, the NRC requested comments on the revised Interim Policy by October 27, 2008 (73 Fed. Reg. 52705). However, on September 15, 2008, the NRC published notice of its "Enforcement Policy Revision," which incorporated the revisions to the Interim Policy, and requested comments on that document by November 14, 2008 (73 Fed. Reg. 53286). On September 19, 2008, NEI counsel and the Director of the NRC's Office of Enforcement discussed the due dates for comments on both the Interim Policy and the Enforcement Policy Revision. NEI counsel communicated NEI's intent to submit comments on both the Interim Policy and the Enforcement Policy Revision by November 14, 2008. Because the revisions to the Interim Policy were incorporated in the Enforcement Policy Revision, the Director of the Office of Enforcement stated that comments on the Interim Policy submitted by November 14, 2008, would be considered timely filed. Thus, NEI's comments on the Interim Policy will be provided, with its comments on the Enforcement Policy Revision, by November 14, 2008.

If you have any questions, please contact me at 202-739-8080; am@nei.org or Jim Riley at 202-739-8137; jhr@nei.org.

Sincerely,



Alexander Marion

C: Mr. Sunil D. Weerakkody, NRR/ADES/DRA/AFP, NRC
Mr. Alexander R. Klein, NRR/ADES/DRA/AFP, NRC