December 5, 2008

Mr. Alexander Marion, Executive Director
Nuclear Operations & Engineering
Nuclear Energy Institute
1776 I Street, NW, Suite 400
Washington, DC 20006-3708

SUBJECT: NRC RESPONSE ON THE CLARIFICATION OF THE ENFORCEMENT DISCRETION POLICY, AS RELATED TO THE LICENSE AMENDMENT PROPOSAL FOR PLANTS TRANSITIONING TO TITLE 10 "ENERGY" *CODE OF FEDERAL REGULATION* (CFR) SECTION 50.48(c)

Dear Mr. Marion:

This letter is in response to the questions you raised concerning the "Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fire Protection Issues" (73 Federal Register 52705; September 10, 2008) in your letter dated October 28, 2008. Specifically, you requested clarification of whether the NRC will exercise enforcement discretion with respect to existing identified noncompliances, and noncompliances identified during the 10 CFR 50.48(c) transition process, in the event 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." You also proposed that enforcement discretion will not be affected (i.e., remain in force throughout the time necessary to submit the revised LAR) during the time between rejection and re-submittal, as long as the re-submittal occurs within a timeframe acceptable to the NRC.

We understand that your requested clarification concerns NRC staff decisions resulting from the application of NRR Office Instruction LIC-109, "Acceptance Review Procedures" [Agencywide Documents Access and Management System (ADAMS) Accession Number ML081200811]. LIC-109 is the procedure that the staff uses to process an LAR. Under the guidance of this procedure there are three acceptance review categories, including (1) unacceptable with no opportunity to supplement, (2) unacceptable with opportunity to supplement and (3) acceptable to review.

You requested clarification regarding the status of enforcement discretion if an LAR is rejected (without an opportunity to resubmit). Under LIC-109, this falls in the category of "unacceptable with no opportunity to supplement." If a licensee's LAR is characterized as such, the staff would follow the enforcement discretion policy as if a licensee withdrew from the transition process (73 Federal Register 52706; September 10, 2008), i.e.,

…"the staff, as a matter of practice, will not take enforcement action against any noncompliance that the licensee corrected during the transition process and will on a case-by-case basis, consider refraining from taking action if reasonable and timely corrective actions are in progress (e.g., an exemption has been submitted for NRC review). Noncompliances that the licensee has not corrected, as well as noncompliances identified after the date of the above withdrawal letter, will be dispositioned in accordance with normal enforcement practices."

It is incumbent upon the licensee to provide a timely, high quality submittal that adequately documents the regulatory and technical basis for, and adequacy of, the requested licensing action. The NRC continues to take steps to assure non-pilot licensees' LARs are found acceptable for review. For example, the staff disseminated detailed technical acceptance review criteria that supplement LIC-109 (ADAMS Accession Number ML082830900 attached to the draft Standard Review Plan) and the draft Standard Review Plan (ADAMS Accession Number ML082830900) at a public meeting held on October 3, 2008. The pilot plants have also shared public and non-public portions of their LARs with affected licensees. The staff plans to work with the pilot licensees to make the staff Requests for Additional Information (RAIs) available to non-pilots.

In situations where limited additional information is necessary to complete an application, the LAR is treated differently. This is covered under LIC-109, "unacceptable with opportunity to supplement." In this scenario, enforcement discretion for the licensee will continue. The staff would request that the licensee supplement the application to address the deficiency by a date determined by the staff. This date will be determined on a case-by-case basis depending on the amount and nature of information missing from the licensee's LAR after discussions with the affected licensee. If, after the receipt of the supplemental information, the LAR is determined to be acceptable for review, enforcement discretion will continue until the LAR is dispositioned by the NRC. If the licensee is unable to adequately supplement the application, the application will be deemed "unacceptable with no opportunity to supplement" and treated as described above.

You also proposed that "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." What you propose is not consistent with the approach the staff intends to follow in implementing the Interim Enforcement Discretion Policy approved by the Commission.

Do not hesitate to contact me with any additional questions.

Sincerely,

/RA/

John A. Grobe, Associate Director
Engineering and Safety Systems
Office of Nuclear Reactor Regulation

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John A. Grobe, Associate Director
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Office of Nuclear Reactor Regulation

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