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Rulemaking, Directives, and Editing Branch
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Additional Information on Request for 10 CFR Part 26 Enforcement Discretion

Reference: NEI Letter to the NRC Office of Administration, October 30, 2008, Comments on Draft Regulatory Guide DG-5026, "Fatigue Management for Nuclear Power Plant Personnel"

Project Number: 689

The Nuclear Energy Institute (NEI)¹ appreciates the opportunity to submit additional information in support of the enforcement discretion requested in the referenced letter. In this letter, the industry requested the NRC to consider a period of six months of enforcement discretion following the implementation date of October 1, 2009, in order to facilitate transition to the new 10 CFR Part 26 rule. The request for discretion is specific to the requirements described in Subpart I of 10CFR26 pertaining to fatigue management.

The complexity of the fatigue management rule and the diversity in interpretation of details being discovered during the development of procedures and policies at utilities indicate that this additional time is necessary for a successful implementation. NEI recommends that during the six months of

¹ NEI is the organization responsible for establishing unified industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear materials licensees, and other organizations and entities involved in the nuclear energy industry.

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enforcement discretion, the industry working group and NRC staff collects lessons learned and revises NEI 06-11, "Managing Personnel Fatigue at Nuclear Power Reactor Sites," as appropriate to ensure more consistent implementation of the rule requirements. The alternative is to have inconsistent inspection findings that drive individual licensees to modify their programs in response to the findings furthering the divergence across the regions.

Further, completion of software packages for tracking the work hour restrictions of the rule is dependent on the final resolution of the exceptions to NEI 06-11 described in DG-5026, "Fatigue Management for Nuclear Power Plant Personnel." It is our understanding the NRC expects to issue the final regulatory guidance in May 2009 which will allow only four months for making any necessary modifications. The impact of the short time frame for modification is further magnified by the resource limitations of vendors coordinating and scheduling software installation at many sites. This will impact schedules for licensees completing final development and testing prior to 'go-live' date. Additionally, a significant population of workers will require training on the software program for the tracking system to be effective.

The requirements of the fatigue rule will also result in the need to increase staff. In some cases, such as security, a 20% increase in staffing is expected across the industry. To achieve this increased level requires evaluating and testing a significant number of candidates. In some instances, a licensee may have to screen five times the number of individuals needed. This increase in staff is not isolated to the security organization as several utilities have performed staffing analysis and are hiring additional operations and maintenance personnel. The time required to hire and train the new staff will result in challenges as the rule is implemented and could lead to an increase in the use of waivers. Additionally, there is a potential impact regarding the number of RO and SRO licensed personnel that will be available to support an outage unit at a multi-unit station. The fall 2009 outages will be planned and scheduled prior to the expected issuance of the NRC regulatory guidance which will result in significant schedule impacts.

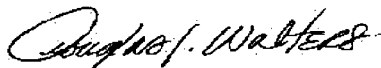
The industry and NRC staff has been working together for over 10 years in the development of a revised 10 CFR Part 26 rule. While there is no historical basis that shows fatigue has had an adverse impact on nuclear safety at operating US nuclear power facilities, the industry has supported the development of a regulation that manages fatigue during both normal operating and outage periods to further ensure fatigue will not adversely impact safety. Granting of a six month period of enforcement discretion will not adversely impact public health and safety and it will allow for a more consistent implementation of the rule.

We request that your decisions on the industry request be communicated as soon as possible.

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If you have any questions, please contact Russell Smith at (202) 739-8058; HUras@nei.org or Jack Roe at (202) 739-8138; jwr@nei.org.

Sincerely,

A handwritten signature in cursive script that reads "Douglas J. Walters".

Douglas J. Walters

Enclosures

c: Ms. Nancy L. Salgado, NRC
Ms. Valerie E. Barnes, NRC
NRC Document Control Desk