

February 9, 2009

Mr. Douglas J. Walters, Senior Director
Operations Support
Nuclear Generation
Nuclear Energy Institute
1776 I Street, NW, Suite 400
Washington DC, 20006-3708

SUBJECT: REQUEST FOR ENFORCEMENT DISCRETION FOR IMPLEMENTATION OF
10 CFR PART 26, SUBPART I

Dear Mr. Walters:

The purpose of this letter is to inform you of the Nuclear Regulatory Commission (NRC) staff's decision on Nuclear Energy Institute's (NEI) request for enforcement discretion during the first six months of implementation of 10 CFR Part 26, Subpart I, "Managing Fatigue."

The NRC staff has considered the information NEI provided in your letter dated October 30, 2008 (Agencywide Document Access and Management System (ADAMS) Accession No. ML083110161), and supplemented by your letter dated December 24, 2008 (ADAMS Accession No. ML090140118). After reviewing the three concerns described by NEI, the NRC staff has determined that enforcement discretion will not be granted for implementation of the requirements of Part 26, Subpart I.

First, in your October and December 2008 letters, you stated that the complexity of the rule and the potential for diverse interpretations of the details in the initial days of implementation could result in inconsistent inspection findings. The NRC staff has processes more appropriate than enforcement discretion to ensure consistent interpretation and inspection of 10 CFR Part 26, Subpart I. The NRC staff welcomes the opportunity to discuss this issue with you in more detail. To that end, a public meeting to discuss consistent interpretation and inspection under the rule has been scheduled for Monday, March 9, 2009, from 1 pm to 3 pm at NRC Headquarters in Rockville, Maryland. A meeting notice will be forthcoming.

You also noted that, due to on-going discussion related to the draft regulatory guide supporting the rule, the industry has been unable to finalize the design, development, and testing of the software packages for tracking information to ensure compliance. The NRC staff has addressed the public comments and made draft final Regulatory Guide 5.73, "Fatigue Management for Nuclear Power Plant Personnel," publically available on February 2, 2009. The document can be found in the Agencywide Document Access and Management System (ADAMS) at ML083450028. Given the long record of public interactions on the guidance, and the public availability of the draft final Regulatory Guide, we believe that sufficient time is available for the industry to finalize, distribute, test, and implement the software packages that will be used to track work hour restrictions required by 10 CFR Part 26, Subpart I.

Finally, you noted that licensees will need additional staff in order to meet the work hour restrictions contained in the rule. The NRC has already considered the time needed to recruit, screen, hire, and train staff and compensated for that by deferring the implementation date of the requirements of Subpart I for 18 months. In addition, individual licensees, on a case-by-case basis, may request an exemption, including an exemption to allow more time to hire and train the staff necessary to fully implement the revised fatigue management requirements. Such a request must provide adequate justification.

If you have any questions please feel free to contact me at 301-415-1004 or Timothy Kobetz, Chief, Inspection Program Branch, at 301-415-0385.

Sincerely

/RA/

Frederick D. Brown, Director
Division of Inspection and Regional Support
Office of Nuclear Reactor Regulation

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Sincerely

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Division of Inspection and Regional Support
Office of Nuclear Reactor Regulation

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