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3/26/09
74FR 13272

May 27, 2009

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Mr. Michael T. Lesar
Chief, Rulemaking and Directives Branch
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

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RULES AND DIRECTIVES
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Subject: Comments on Draft Revisions to the "License Renewal Interim Staff Guidance Process and NRC Regulatory Issue Summary 2007-16"

Project Number: 689

Dear Mr. Lesar:

On March 26, 2009, the U.S. Nuclear Regulatory Commission (NRC) issued a *Federal Register* Notice (74 FR 13272) soliciting public comment on draft revisions to the License Renewal Interim Staff Guidance Process (LR-ISG) and NRC Regulatory Issue Summary 2007-16. The draft LR-ISG incorporates changes to the existing process and to the basic framework for developing and implementing LR-ISGs. The revision to NRC Regulatory Issue Summary (RIS) 2007-16 clarifies the role of the LR-ISG process for including "newly identified" systems, structures and components in accordance with § 54.37(b) of Title 10, Part 54, "Requirements for Renewal of Operating Licenses for Nuclear Power Plants," of the Code of Federal Regulations (10 CFR 54.37(b)).

The Nuclear Energy Institute (NEI)¹ has solicited comments from the industry on the subject draft documents and appreciates the opportunity to submit the comments in the attached pages. The industry's main comment on revision 1 of RIS 2007-16 relates to the apparent change in NRC position on "newly identified" SSCs (see Comment 1 in the attachment). Based on our discussion at an April 29, 2009 public meeting and the NRC slides used at that meeting, the NRC has reverted to its previous position as documented in revision 0 of the RIS. With this understanding, this concern has been resolved. Our comment has been retained in the attachment only as a means of

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

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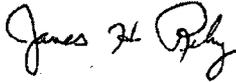
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documenting our position in case any questions arise on this issue during the revision approval process for the RIS.

If you have any questions, please contact me or Julie Keys (202-739-8128; jyk@nei.org).

Sincerely,

A handwritten signature in cursive script that reads "James H. Riley".

James H. Riley

Enclosure

c: Mr. Brian Holian, U.S. Nuclear Regulatory Commission

**Comments on proposed changes to:
RIS 2007-16, *Implementation of the Requirements of 10CFR54.37(b) for
Holders of Renewed Licenses*
and
License Renewal Interim Staff Guidance Process**

- References:
- 1) Letter dated July 5, 2006, Alexander Marion, NEI, to Dr. P. T. Kuo, NRC, NEI position on Implementation of 10 CFR 54.37(b), including Enclosure.
 - 2) Letter dated October 11, 2006, Frank P. Gillespie, NRC, to Alexander Marion, NEI, Response to the Nuclear Energy Institute Regarding Implementation of the Requirements of 10 CFR 54.37(b).
 - 3) NRC Regulatory Issue Summary 2007-16: Implementation of the Requirements of 10 CFR 54.237(b) for Holders of Renewed Licenses, August 23, 2007
 - 4) NRC slides handed out at a public meeting with NEI on 4/29/09

General Comments/Discussion

Comment 1:

The primary focus of the three referenced letters, and discussion at a meeting between NEI and the NRC on April 29, 2006 was on the meaning of the words "newly identified" in 10 CFR 54.37(b). It is NEI's position that "SSCs that are plant additions or modifications that are installed after the new license is issued are not subject to the provision of 10 CFR 54.37(b)", as stated in Reference 1. In References 2 and 3, the NRC agreed with this position. Reference 2, page 4, second paragraph, states "The staff agrees that §54.37(b) does not apply to SSCs installed after the renewed license is issued." Reference 3, page 2, the last sentence in the section titled *Newly Identified Systems, Structures, and Components* states "SSCs that are plant additions or modifications installed after the renewed license is issued are not subject to the provisions of 10 CFR 54.37(b)."

In the proposed revision to RIS 2007-16, the change to the NRC's position appears on page 2, under Summary of Issue, Newly Identified Systems, Structures and Components. The proposed revision states

"In the context of 10 CFR 54.37(b), "newly identified" SSCs to be included in the FSAR update required by 10 CFR 50.71(e) are those SSCs that meet either of the following two conditions:

- (1) The licensee installed the SSCs in the plant after the NRC granted a renewed operating license, and the SSCs would have been included within the scope of license renewal had they been installed before the NRC issued the renewed license. "

The industry believes that this is a change in the NRC's previous position on newly installed SSCs. NEI agrees that newly installed SSCs may be included in the 10 CFR 50.17(e) FSAR update because of the plant addition or modification, but the update would not include the information specified in 10 CFR 54.37(b) for newly installed SSCs.

In addition to the position stated above, NEI also believes that implementation of the proposed changes to RIS 2007-16 would impose a significant financial burden on plants with renewed licenses. These plants would have to perform a review of all plant changes since the renewed license was issued to determine if any of these changes would have to be included in the FSAR under 10CFR54.37(b); and would have to continue these reviews for the life of the plant. NEI believes this adds no value as the current processes for plant modifications and additions requires that the newly installed equipment must be designed and maintained to operate for the rest of the life of the plant. Imposing the 10CFR54.37(b) regulation on these newly installed components would duplicate the normal design process requirements at an additional cost but with no added value. For these reasons, NEI does not agree with the Staff's suggestion in the April 29th meeting that the newly installed SSCs might be included in FSAR updates because of the possibility of additional license extensions, since there is no material value added in doing this and it would be very costly to implement

In summary, NEI believes that the proposed change to RIS 2007-16 that would require newly installed SSCs to be included in the 10 CFR 50.71(e) FSAR update required by 10 CFR 54.37(b) is inconsistent with previous NRC positions. NEI also believes that the NRC position as stated in References 2 and 3 that newly installed SSCs (i.e. installed after the renewed license is issued) are not subject to 54.37(b) is correct and should be retained.

NEI agrees with the slides that the NRC handed out at the meeting on April 29, 2009 that restated and adopted the original RIS interpretation of newly identified.

Comment 2:

NEI agrees with the other proposed change to RIS 2007-16 to include a backfit review of all License Renewal Interim Staff Guidance documents under 10 CFR 50.109 and to extend the ISG process to include environmental review issues. However, this addition of backfit review for ISGs should have no impact on implementation or interpretation of 10 CFR 54.37(b).

Comment 3:

NEI recommends that the NRC consider splitting RIS 2007-16 into two separate documents, one on implementation of 10CFR54.37(b) and the other on the ISG process, including the requirement for backfit analysis for proposed ISGs. This change may help to clarify the NRC's intent by separating the two messages.

Comment 4:

Some of the information in revision 0 of RIS 2007-16 was deleted in revision 1: NRC's agreement to inform renewed license holders of new ISGs and to inform the industry of newly identified SSCs

found in current LARs. This information could be placed in paragraph 4.2.4 of the ISG Guidance. This information is valuable to licensees and we request that the expectation to communicate it be retained.