

March 25, 2010

MEMORANDUM TO: Steven A. Laur, Senior Technical Advisor
Division of Risk Assessment
Office of Nuclear Reactor Regulation

Stephen C. Dinsmore, Senior Reliability and Risk Analyst
PRA Licensing Branch, Division of Risk Assessment
Office of Nuclear Reactor Regulation

FROM: Eric J. Leeds, Director /RA/
Office of Nuclear Reactor Regulation

SUBJECT: DIFFERING PROFESSIONAL OPINION DECISION REGARDING
PROPOSED LANGUAGE FOR REGULATORY GUIDE 1.205,
REVISION 1 (DPO-2009-001)

On July 24 and 27, 2009, in accordance with Management Directive 10.159, "The NRC Differing Professional Opinions Program," you submitted differing professional opinions (DPO) concerning the language proposed in Regulatory Guide (RG) 1.205, Revision 1, "Risk-Informed, Performance-Based Fire Protection for Existing Light-Water Nuclear Power Plants." Specifically, your DPOs were focused on the July 2009 version of the RG that asked the licensee to evaluate the additional risk from recovery actions, but the NRC staff was precluded from evaluating acceptability of any risk increases.

Furthermore, requiring licensees to evaluate the additional risk from recovery actions but not using it in determining the acceptability of the licensee's fire protection program was burdensome – NRC should not ask for information it does not use. The July 2009 version would also allow previously approved operator actions to meet the plant's old licensing basis and require other operator actions to meet NFPA-805 requirements, which is contrary to the 10 Code of Federal Regulation (CFR) 50.48(c) rule's Statement of Considerations that the rule not be implemented on a selective basis. The purpose of this memorandum is to respond to your DPO.

On August 13, 2009, I established a DPO Ad Hoc Review Panel (the Panel) and tasked it to meet with you, review your DPO submittal, and issue a DPO report, including conclusions and recommendations to me regarding the disposition of the issues presented in your DPO. The Panel met with you to establish a concise statement of your concerns. On February 1, 2010, after reviewing the applicable documents, completing internal interviews of relevant individuals and completing its deliberations, the Panel issued its report to me (enclosure).

The Panel concluded that your concerns had merit and that the July 2009 version of RG 1.205 was not in compliance with 10 CFR 50.48(c). I understand the compromise language subsequently developed by the staff and management has resolved your concerns.

Following receipt of the panel's draft report, I provided a copy of the report to you for your review. Your feedback that a meeting was not needed to discuss the report is noted. As a result of the Panel's recommendations, I am assigning the following task to the Director, Division of Policy and Rulemaking (DPR), in consultation with appropriate staff and management in NRR:

"Consider the need to establish clear guidance concerning the transition to alternative rules and its effect on the affected plant's current licensing basis to be completed by September 30, 2010."

Thank you for raising your DPO and for your active participation in the DPO process. An open and thorough exploration of how we carry out our regulatory process is essential to keeping these programs effective. Your willingness to raise concerns with your colleagues and managers and ensure that your concerns are heard and understood is admirable and vital to ensuring a healthy safety culture within the Agency.

Enclosure
As stated

cc: J. Uhle, RES
T. Collins, NRR
M. Stutzke, RES
R. Pedersen, OE

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