March 26, 2010

MEMORANDUM TO: Marissa G. Bailey, Deputy Director
Special Projects and Technical
Support Directorate
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
and Safeguards

THRU: Patricia A. Silva, Chief **/RA/**
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FROM: Michael Raddatz, Sr. Project Manager **/RA/**
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SUBJECT: SUMMARY OF THE March 11, 2010 PUBLIC MEETING TO DISCUSS THE USE OF DESIGN FEATURES TO MEET THE PERFORMANCE REQUIREMENTS OF 10 CFR PART 70 SUBPART H

Background

On March 11, 2010, the U.S. Nuclear Regulatory Commission (NRC) staff met with the Nuclear Energy Institute (NEI), and other stakeholders at the NRC Headquarters to discuss the use of design features to meet the performance requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 70 Subpart H. Enclosure 1 contains the list of attendees; the agenda is attached as Enclosure 2.

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This meeting was held at the request of industry representatives to discuss their belief that recent NRC inspections are trending toward compliance based as opposed to risk informed, performance based regulatory oversight. They believed that this would be contrary to the original intent of the new 10 CFR Part 70. In support of the meeting, industry submitted a White Paper dated January 22, 2010, (Enclosure 3). That paper served as the vocal point of the discussions.

Discussion

In the opening remarks, Dan Dorman, Director of Fuel Cycle Safety and Safeguards for NRC, and Janet Schlueter of NEI, set the goals for the meeting.

1. Ensure a common understanding of both the NRC and Industry Position regarding Design Features.
2. Have an effective dialog about the nuances of the issues
3. Acknowledgement by NRC of Industries requests articulated within the White Paper
4. In the end, a defined path forward that includes a time-line.

Dan Dorman opened the discussion with a presentation (Enclosure 4) covering the current NRC view of how 10 CFR Part 70 Sub part H should be interpreted.

Charles Vaughan of GE-Hitachi presented the industry's position (Enclosure 5), which covered the major points raised in the White Paper.

A significant portion of the discussion revolved around interpretation of both the regulatory requirements, and the application of guidance provided by NRC in documents such as NUREG-1520, "Standard Review Plan". In addition, industry stated that, in their opinion, NRC was imposing new requirements without making a safety case. By increasing the scope and depth of inspections, industry felt that NRC was no longer focusing on those aspects of facility operation that had the greatest risk. Thus, NRC inspections were no longer risk-informed.

Industry then reiterated earlier concerns that compliance under what they considered a new interpretation would be prohibitory, costly, ambiguous at best, would not provide increased safety and at worst, may reduce safety by diverting resources from the areas of facility operation with the greatest concern. Industry agreed that it was their responsibility to remain compliant to the letter of the law. However, they were concerned that, as long as these issues remain under discussion, they could not assure the NRC, or themselves that they remained administratively in compliance. Therefore, they requested that NRC consider enforcement discretion as long as these issues remain open.

NRC disagreed that there were changes in how we inspect or interpret regulatory requirements however; NRC agreed that there was significant room for improvement in the guidance that has been provided. Therefore, NRC agreed to consider the issue of enforcement discretion, on a limited basis, while the expanded guidance is being developed. Following the meeting, NRC received a document entitled "How Design Features Differ from IROFS", for AREVA NP Inc. (Enclosure 6). This document was submitted as a clarification to discussions that took place during the meeting and delineates how AREVA sees the issues.

As a result of the meeting, NRC agreed, as the path forward, to develop guidance to address the concerns raised in the NEI White Paper. This guidance would be issued for review in April 2010. Following the publication of the guidance, NRC agreed to a follow-up meeting the week of April 26, 2010.

Enclosures:
1. Meeting Attendees
2. Meeting Agenda
3. NEI White Paper (ML100360209)
4. NRC Slides
5. NEI Slides
6. How Design Features Differ From IROFS

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Janet Schlueter	NEI
Kevin Morrisey	NRC
Nick Baker	NRC
Rex Wescott	NRC
Ty Naquin	NRC
Cathy Haney	NRC
Charles Vaughan	NEI
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