



NUCLEAR ENERGY INSTITUTE

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April 29, 2010

Mr. David Matthews
Director, Division of New Reactor Licensing
Office of New Reactors
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: NEI Comments on NRC plans to amend regulations related to ITAAC Maintenance

Project Number: 689

Dear Mr. Matthews,

The Nuclear Energy Institute (NEI)¹ is pleased to provide industry feedback on NRC staff plans and proposals to amend the regulations to include new requirements related to "ITAAC Maintenance"—the period between the ITAAC closure and the NRC finding under 10 CFR 52.103(g) that "the acceptance criteria in the combined license are met."

We appreciate the opportunities provided by the staff in public meetings on March 5 and March 25 to discuss the draft rule language under development. In brief, as stated in those meetings, we believe new rulemaking at this time to address ITAAC Maintenance is unnecessary for the following reasons:

- The sufficiency of existing requirements in 10 CFR 52.99 on ITAAC closure, 10 CFR 52.6 on completeness and accuracy of information, and 10 CFR 52.103(g) on the Commission finding that all acceptance criteria in the combined license are met
- Ongoing efforts of the industry and NRC staff to develop guidance on ITAAC Maintenance
- The lack of experience indicating a need for new requirements in this area

Both the industry and the staff have long recognized the need for additional guidance related to ITAAC maintenance. To that end, NEI recently submitted a draft Revision 4 to NEI 08-01 (*Industry Guideline for ITAAC Closure Process under 10 CFR Part 52*) that includes guidance on ITAAC

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.

Mr. David Matthews

April 29, 2010

Page 2

Maintenance issues. We are currently working to incorporate comments provided by the staff on March 25 and expect to provide a revised draft Revision 4 of NEI 08-01 in May for NRC staff review. The NRC has already endorsed NEI 08-01, Revision 3, via Regulatory Guide 1.215, *Guidance for ITAAC Closure under 10 CFR Part 52*. We believe ITAAC Maintenance issues can be effectively addressed via industry guidance ultimately endorsed in NRC RG 1.215, and we are prepared to work with the staff to assure this guidance meets the staff's needs and objectives.

While improved from the March 5 version, draft rule language presented by the staff on March 25 remains overly complex and prescriptive, and in some cases inconsistent with the understandings reached in a series of public workshops during 2009. For example, we have consistently emphasized the importance of prompt communication to the NRC staff of conditions that materially affect a closed ITAAC, and we have included guidance to this effect in NEI 08-01. During our numerous public workshop discussions, neither the industry nor the staff envisioned any new regulation in this regard. We were therefore surprised to see draft proposed rule language on this topic. Good communication between licensees and the staff is expected to be an essential element of new build projects, especially with respect to ITAAC-related matters and the Section 52.103(g) finding. Absent experience to the contrary, we see no need or basis for new regulations.

We were particularly surprised at the staff proposal to expand the mission of the NRC Operations Center to handle new plant construction issues. Without experience that indicates the expected volume of ITAAC-related notifications, this staff proposal raises serious questions about the resulting burden on NRC resources and potential loss of Operations Center focus on its core public safety mission. As an alternative, we propose to continue working with the staff toward appropriate guidance for prompt communication on emergent issues affecting closed ITAAC. For example, we could develop a template that would assure clear, consistent notifications to the appropriate NRC officials and facilitate tracking of corrective actions by the staff.

The attachment to this letter provides specific comments on this and other elements of the staff's March 25 draft rule language. In particular:

- Consistent with 10 CFR 52.6, licensees understand well their obligation to provide information to the NRC that is complete and accurate in all material respects, and their obligation to notify the NRC of new information having a significant implication for public health and safety or common defense and security. This regulation assures that new information material to that previously provided to the NRC, such as an ITAAC Closure notification, will be communicated to the NRC. Thus no new Section 52.99(c)(3) requirement is necessary. Further, we have already included in draft NEI 08-01 guidance on submittal of supplemental ITAAC closure notifications. In particular, guidance and examples of information "that materially alters the ITAAC determination bases" are provided in NEI 08-01 consistent with the four thresholds established through public workshops by the industry and the NRC.
- Proposed new 52.99(c)(4) language requires licensees to maintain "records of the bases for determining whether a notification under paragraph (c)(3)(i) of this section is required, and the bases for all notifications made under paragraph (c) of this section." In short, this would require

Mr. David Matthews

April 29, 2010

Page 3

maintenance of records on "whether" a supplemental ITAAC closure notification is required at all, as well as records of the bases for all such notifications actually made. Because essentially all conditions will be screened in some fashion for ITAAC impacts, this proposed requirement is so broad in scope as to be problematic and unduly burdensome to implement. Licensees will maintain records in accordance with their Quality Assurance Program, and we see no compelling need for this additional recordkeeping requirement. Recordkeeping is a good example of a secondary issue that is better addressed in regulatory guidance.

- Emergent issues after the licensee submits the "All ITAAC Complete" letter could be challenging for both the NRC and the licensee. Proposed 52.99(f)(2) is not helpful in this regard. Language requiring notification of the Operations Center within 24 hours of identifying information for which a Supplemental ITAAC Closure notification "may be required" is, again, so broad as to be problematic and could lead to a number of notifications to the Operations Center.

The challenge of ITAAC issues occurring as the 10 CFR 52.103(g) finding approaches cannot be solved by regulation. For example, proposed Section 52.99(f)(2) does not address issues identified in the last 24 hours before the finding. Safety concerns about eleventh-hour emergent issues are mitigated by the fact that plant Technical Specifications take effect upon the Section 52.103(g) finding. If plant conditions do not support fuel load and operation, those activities will not proceed until Technical Specifications are satisfied. This is another issue that should be addressed to the extent practical in guidance rather than prescriptive regulation.

We appreciate the work of the NRC staff toward development of clear, workable guidance related to ITAAC closure, including constructive stakeholder interactions over the past year on ITAAC Maintenance. We believe appropriate guidance can be developed — and modified as experience is gained — within the framework of existing requirements. We are prepared to work with the staff to assure that the resulting regulatory guidance meets the NRC's needs and objectives.

We appreciate your consideration of these comments. If you have any questions, please contact me.

Sincerely,



Russell J. Bell

Attachment

c: Mr. Glenn Tracy, U.S. Nuclear Regulatory Commission
Ms. Nanette Gilles, U.S. Nuclear Regulatory Commission
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