

June 21, 2010

Mr. Russell J. Bell, Director  
New Plant Licensing  
Nuclear Generation Division  
Nuclear Energy Institute  
1776 I Street, NW, Suite 400  
Washington, DC 20006-3708

SUBJECT: RESPONSE TO NUCLEAR ENERGY INSTITUTE LETTER ON NUCLEAR REGULATORY COMMISSION PLANS TO AMEND REGULATIONS RELATED TO INSPECTION TEST ANALYSIS ACCEPTANCE CRITERIA MAINTENANCE

Dear Mr. Bell:

By letter dated April 29, 2010 (Agencywide Documents Access and Management System Accession No. ML101300103), the Nuclear Energy Institute (NEI) submitted a letter to the U.S. Nuclear Regulatory Commission (NRC) 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 inspection, test, analysis, and acceptance criteria (ITAAC) closure and the NRC finding under Title 10 of the *Code of Federal Regulations* (10 CFR) 52.103(g) that "the acceptance criteria in the combined license are met."

In your letter, you acknowledged the opportunities provided by the NRC staff in public meetings on March 5 and March 25, 2010, to discuss the draft rule language under development. However, you reiterated your belief, as stated in those meetings, that new rulemaking at this time to address ITAAC maintenance was unnecessary for the following reasons:

- the sufficiency of existing requirements in 10 CFR 52.99, "Inspection during Construction," on ITAAC closure; 10 CFR 52.6, "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 (staff) to develop guidance on ITAAC maintenance
- the lack of experience indicating a need for new requirements in this area

You further stated that both the industry and the staff have long recognized the need for additional guidance related to ITAAC maintenance. To that end, NEI submitted a draft Revision 4 to NEI 08-01, "Industry Guideline for ITAAC Closure Process under 10 CFR Part 52," on May 11, 2010, which includes guidance on ITAAC maintenance issues. The NRC has already endorsed NEI 08-01, Revision 3, issued January 2009, via Regulatory Guide (RG) 1.215, "Guidance for ITAAC Closure under 10 CFR Part 52."

You stated your belief that ITAAC maintenance issues can be effectively addressed by the industry guidance ultimately endorsed in NRC RG 1.215.

As the NRC staff stated in the March public meetings, the staff does not agree that rulemaking on ITAAC maintenance is unnecessary. In general, the staff believes that rulemaking is necessary to ensure that the NRC has sufficient information, in light of new information developed or identified after the ITAAC closure notification under 10 CFR 52.99(c)(1), to complete all of the activities necessary for the Commission to make a finding on ITAAC. In addition, the rulemaking is necessary to ensure that interested persons have access to information on ITAAC at a level of detail sufficient to address the threshold for requesting a hearing, as specified in the Atomic Energy Act, Section 189.a(1)(B) – at least until the opportunity to request a hearing on ITAAC has passed.

Your letter highlighted some of your concerns with the staff's preliminary draft proposed rule language and included an attachment with specific comments on the staff's proposal as discussed at the March 25, 2010, public meeting. The staff appreciates the early feedback on the preliminary draft proposed rule language that NEI and other stakeholders provided during the March 2010 public meetings. As indicated in those meetings, the staff was not seeking formal comment on the proposed rule text at that time. The purpose of the public meetings was to engage interested stakeholders in a discussion of the draft proposed rule language and to gain information on the possible effects and consequences of the preliminary draft rule language that would inform the staff's development of the draft proposed rule to be presented to the Commission for its consideration. The staff believes the two public meetings served the intended purpose and that the draft proposed rule to be provided to the Commission will reflect NRC staff consideration of much of the information received during the meetings. Therefore, we are not providing a point-by-point response to your written comments at this time. Instead we request that, once the NRC publishes the proposed rule in the *Federal Register* for public comment, you evaluate the proposed rulemaking and resubmit those written comments from your April 29, 2010 letter that NEI believes are applicable to the published proposed rule. At that time, the NRC will address NEI's comments, as part of the NRC's response to all of the comments received by the NRC on the proposed rule.

R. Bell

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If you have any questions or comments regarding this matter, please contact Ms. Nanette Gilles by telephone at (301) 415-1180 or via e-mail at [Nanette.Gilles@nrc.gov](mailto:Nanette.Gilles@nrc.gov).

Sincerely,

**/RA Fkstulewicz for/**

David B. Matthews, Director  
Division of New Reactor Licensing  
Office of New Reactors

Project No. 689

cc: See next page

If you have any questions or comments regarding this matter, please contact Ms. Nanette Gilles by telephone at (301) 415-1180 or via e-mail at [Nanette.Gilles@nrc.gov](mailto:Nanette.Gilles@nrc.gov).

Sincerely,

David B. Matthews, Director  
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