

July 21, 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/**
Special Projects and Technical
Support Directorate
Technical Support Branch
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
and Safeguards

FROM: Michael Raddatz, Sr. Project Manager **/RA/ P. Silva for**
Special Projects and Technical
Support Directorate
Technical Support Branch
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
and Safeguards

SUBJECT: SUMMARY OF THE JUNE 28, 2010, PUBLIC MEETING TO
DISCUSS THE USE OF DESIGN FEATURES TO MEET THE
PERFORMANCE REQUIREMENTS OF TITLE 10 OF THE CODE
OF FEDERAL REGULATIONS PART 70 SUBPART H

Background

On June 28, 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 and enclosure 2 contains the agenda.

CONTACT: Michael Raddatz, NMSS/FCSS
(301) 492-3108

This meeting was held at the request of the Nuclear Energy Institute (NEI) to discuss feedback provided by NEI in a letter dated June 10, 2010 (ML101670267), following the April 27, 2010, public meeting on this same subject. The NEI letter contained a proposal for a suggested path forward. During the April 27, 2010 meeting NEI requested a detailed response to their letter dated January 22, 2010. NEI was requesting the staff opinion on specific examples of Design Features that they had provided. The NRC responded to that request, as well as the discussions that took place in the April 27, 2010, meeting in a June 17, 2010, letter (ML101450123). This correspondence served as a foundation for the discussions.

The NRC staff opened the discussion by stating they had carefully reviewed this most recent submittal by NEI, where in industry defended the concepts of design features and bounding assumptions, in lieu of items relied on for safety (IROFS), to meet the requirements of 10 CFR Part 70. The staff then stated that they had found no new compelling argument in that submission that demonstrated that design features and bounding assumption were supported in the rule. Staff has therefore concluded that the use of design features and bounding assumptions is not supported by the rule, and thus should not, at this time, be utilized by the licensees to achieve compliance.

Staff and industry representatives spent the remainder of the meeting discussing options that were available. Staff agreed that industry was operating in a manner that protected public health, safety, and the environment and also agreed that for the majority of findings related to this issue could be easily classified as compliance-issues as opposed to safety-issues. However, compliance with the regulations, as interpreted by the NRC Office of the General Counsel was a requirement. Industry stated that they believe that they are in compliance and that the current staff position is a new interpretation of 10 CFR Part 70. To comply with what they consider a strict new interpretation of 10 CFR Part 70, they may have to expend considerable resources. At a minimum they may have to designate additional systems, components, and/or procedures as IROFS, and that in doing so the concept of a risk-informed regulatory oversight program would be lost.

Staff agreed to take all of these arguments into consideration and would inform industry through NEI of the chosen course of action. A follow-up meeting was not scheduled.

Enclosures:

1. Meeting Attendees
2. Meeting Agenda

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Name	Organization
Michael Tschiltz	U.S. Nuclear Regulatory Commission (NRC)
Nick Baker	NRC
Rex Wescott	NRC
Tracey Stokes	NRC/Office of the General Council (OGC)
Christopher Tripp	NRC
Marissa Bailey	NRC
Christian Fisher	NRC
Michael Raddatz	NRC
Patricia Silva	NRC
Chad Cramer	NRC
Dennis Morey	NRC
Steve Vias	NRC
Thomas Marenchin	NRC
Eugene Cobey	NRC
Janet Schlueter	Nuclear Energy Institute (NEI)
Charles Vaughan	NEI
Matt Forsbacker	NEI
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Jeff Reynolds	GNF
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Mark Wetterhahn	Attorney
Perry Robinson	Louisiana Energy Services
John Miller	International Isotopes
Wyatt Padgett	WSA (NEF)
Gerald Couture	Westinghouse
Jennifer Wheeler	NFS
Gregory Courzine	USEC

Agenda for June 28th Meeting on Design Features

- 1) Discuss how Design Features and Bounding Assumptions (DF/BA) meet the regulatory requirements of 10 CFR Part 70.61(e). Note that Staff has not seen a compelling argument in any of the industries written submissions to date. **NEI**
- 2) Discuss what industry sees as preventing us from reaching agreement. Specifically, discuss your interpretation, and its basis within the regulations and guidance. **NEI**
- 3) Discussion of how far apart you believe we are, and what paths forward you have identified that will lead to a resolution while providing equivalent safety. **NEI / NRC**
- 4) No matter which path to resolution is chosen there will be a time gap, what should we be doing in the mean time? **NEI / NRC**
- 5) **Closing Remarks** **NEI / NRC**