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July 16, 2012

Mr. David L. Skeen
Director, Japan Lessons Learned Project Directorate
Office of Nuclear Reactor Regulation
U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: NEI Comments on Fukushima Near-Term Task Force Recommendation 1 – Regulatory Framework

Project Number: 689

Dear Mr. Skeen:

The U.S. Nuclear Regulatory Commission (NRC) conducted the first public meeting to discuss Fukushima Near-Term Task Force (NTTF) Recommendation 1, regarding the need for a new regulatory framework, on June 20, 2012. The meeting was beneficial, yet additional public meetings are warranted to discuss the array of considerations that are associated with this complex activity. In addition to the statements made in the meeting, we provide the following general comments and suggestions.

Schedule

The schedule is unnecessarily aggressive. The development of the proposed regulatory framework is not a time- or safety-critical activity. The NRC is pursuing specific actions in response to the lessons learned from the Fukushima accidents. The finite NRC and industry resources must be focused on the NRC Tier 1 Fukushima recommendations that provide approximately 90 percent of the safety benefit of all the NRC recommendations. We believe it would be more efficient and productive to establish a more deliberate process, building the framework through regular public input and participation. This will effect a more practical, efficient and reliable set of regulatory enhancements.

Problem Statement

The problem statement justifying this effort must be better defined. The case for the development and implementation of a new regulatory framework has not been made. At this stage, with NRC and industry resources totally consumed by the current Fukushima Tier 1 actions, a clear description of the problem is needed to justify the diversion of critical resources to this project.

The NTTF suggested that the NRC needed a strong program for dealing with the unexpected, including severe accidents. For over 50 years, the NRC and its predecessor, the Atomic Energy Commission, have demonstrated a strong program for dealing with the unexpected. The 30-plus recommendations that have been approved by the NRC show that the current regulatory framework is robust and capable of responding to the unexpected. The NTTF noted:

“Although complex, the current regulatory approach has served the Commission and the public well and allows the task force to conclude that a sequence of events like those occurring in the Fukushima accident is unlikely to occur in the United States and could be mitigated, reducing the likelihood of cored damage and radiological release.”

As technology advances and lessons are learned from operating experiences, regulatory processes and national consensus standards evolve. All effective regulatory systems will, by definition, require changes and additions to address unanticipated events. The NRC staff has acknowledged that any of the proposed regulatory reform options could still be subject to additions or changes following such significant events.

Given the above, and the potential resource and potential operational impacts of a large-scale regulatory framework change, a clear problem statement should be defined with public input to justify the level of effort involved, the safety benefit, and take into account the regulatory enhancements already under development.

Lessons Learned from Previous Efforts

The NRC presentation materials from the June 20 meeting proposed a number of options for proceeding with the development of a new regulatory framework. In particular, Basic Option 3 – Develop Revised Regulatory Framework, was presented in significant detail, with a number of sub-options provided. Basic Option 3 relies on increased use of risk analyses, enhanced definitions of defense-in-depth, and the establishment of a new category of regulations for extended design basis events. In the meeting, the NRC staff provided a detailed assessment of these options but did not include any discussion of lessons learned from previous and ongoing efforts to establish similar risk-informed regulatory approaches.

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Past efforts at developing a new regulatory framework have proved to be far more challenging than anticipated. A new project on developing a new or amended regulatory framework must include explicit consideration of the lessons learned from activities, such as 10 CFR 50.48(c) (NFPA 805). Further, risk-informed solutions can be limited or impaired by state of knowledge issues and uncertainty considerations, as has been demonstrated under NFPA 805.

Cumulative Effects

NRC SECY-12-0076 discusses the plan for retrospective analysis of existing rules in accordance with Executive Order 13579. Given that significant regulatory activity was (and remains) underway prior to Fukushima, and that the NRC is developing specific regulatory enhancements to address Fukushima accident insights, we believe the cumulative impact of the proposed regulatory reform effort and other regulatory activities deserve consideration.

We appreciate the opportunity to provide comments on this subject and look forward to continued interactions on improving the regulatory framework. If you have any questions, please contact me or Biff Bradley (reb@nei.org; 202.739.8083).

Sincerely,

A handwritten signature in black ink, appearing to read "Adrian Heymer". The signature is written in a cursive style with a horizontal line underneath.

Adrian Heymer

c: Mr. Michael R. Johnson, EDO, NRC
Mr. Eric J. Leeds, NRR, NRC