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August 21, 2012

Mr. Mark Thaggard
Deputy Director for Emergency Preparedness
Office of Nuclear Security and Incident Response
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: NEI Comments on Rule Implementation and Impact of FEMA Guidance

Project Number: 689

Dear Mr. Thaggard:

I am writing on behalf of the Nuclear Energy Institute's (NEI)¹ Emergency Preparedness Working Group (EPWG) to identify challenges associated with implementation of the NRC's Emergency Preparedness (EP) rule, which was issued on November 23, 2011 (*76 Fed. Reg. 72560*). The feedback provided in this letter is intended to assist the staff in responding to the Commission's direction to "assess stakeholder feedback and inform the Commission if the FEMA guidance adversely affects the timelines for rule implementation schedules outlined in SECY-11-0053."² The EPWG has identified implementation challenges in two rule areas: (1) Back-up Alert and Notification System, and (2) Challenging Drills and Exercises. A primary cause of these implementation challenges, which are described below, is a lack of clear, mutually understood FEMA guidance.

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.

² Staff Requirements – SECY-11-0053-Final Rule: Enhancements to Emergency Preparedness Regulations (10 CFR Part 50 and 10 CFR Part 52)(RIN-3150-AI10), August 30, 2011 (SRM-SECY-11-0053).

Back-up Alert and Notification System

The most definitive challenge encountered thus far is implementation of a back-up alert and notification method in the absence of final FEMA REP-10 guidance. The EP rule requires licensee design reports to identify backup alert and notification capability. Licensees who have not identified such capability in their current design reports must revise their reports and submit them to FEMA for review by June 24, 2013. The REP-10 guidance will provide essential insights into FEMA's expectations with regard to the provision of back-up alert and notification systems. But, as FEMA reported to the NEI EPWG on August 16th, the revised REP-10 guidance will not be issued for the first of two public comment periods until the end of September 2012. And, at this point in time, there is no set schedule for final issuance of the guidance. The deadline for licensees to select, procure, and test a back-up capability; revise their design report; and submit the design report to FEMA is less than a year away. It is unclear what methods of providing back-up alert and notification will be acceptable to FEMA, as multiple systems can be credited to meet the requirements for a primary system. Also, FEMA has not determined acceptability criteria for the use of reverse call-out systems that are currently employed by many offsite response organizations (OROs).

Challenging Drills and Exercises

The EPWG anticipates that demonstration of the elements of "Challenging Drills and Exercises" will present significant challenges. Implementation of the hostile action based scenarios is a first time evolution for licensees, OROs, and incident command operations, as well as for the regulator. One exercise has already been postponed due to a lack of common understanding of the relevant guidance, participation expectations, planning requirements, and FEMA evaluation criteria. Although most of the issues identified in the June 14th public meeting between the NRC, FEMA, the licensee, and the OROs have been resolved, OROs are still seeking clarity from FEMA on demonstration criteria for these hostile action events. Thus, although the challenges in this area are not as pressing as those associated with the back-up alert and notification systems, it should continue to be an area of focus for the staff when considering implementation challenges.

Cumulative Impacts

The EPWG is concerned by the overall cumulative impact of the broad spectrum of changes to their own programs and that of their OROs, which have resulted from the changes to the EP rule, associated NRC guidance, and the FEMA REP Program Manual. The same finite resources that are maintaining existing programs are implementing these changes with their OROs and are also addressing Near Term Task Force Tier 1 actions. Future rulemaking for Tier 2 and 3 recommendations and the revision to FEMA/NRC NUREG 0654 – FEMA REP 1 will result in additional resource demands. NEI respectfully requests that the staff continue to consider the cumulative resource burden on licensees and their ORO partners for the duration of the implementation period.

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The NEI EPWG appreciates the opportunity to provide this feedback on rule implementation. As the implementation period spans three years through 2015, NEI requests the opportunity for industry to report on impacts and consequences of rule implementation throughout this period to more systematically identify challenges and consequences that will better inform the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Perkins-Grew". The signature is fluid and cursive, with a large initial "S" and a long, sweeping tail.

Susan Perkins-Grew

c: Mr. Joseph D. Anderson, NSIR/DPR/DDEP/ORLOB, NRC
Mr. Timothy Greten, FEMA
Mr. Thomas P. Joyce, PSEG Nuclear
NRC Document Control Desk