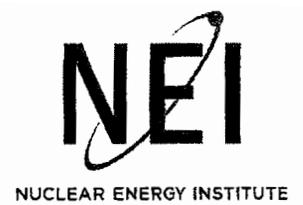


MARVIN S. FERTEL
President and Chief Executive Officer

1201 F Street, NW, Suite 1100
Washington, DC 20004
P: 202.729.8125
msf@nei.org
nei.org



October 29, 2013

The Honorable Allison M. Macfarlane
Chairman, U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Dear Chairman Macfarlane:

The Office of Management and Budget's September 17, 2013 Memorandum to executive departments and agencies recognized that "prudent management requires that agencies be prepared for the possibility of a lapse [in appropriations]." Given the uncertainty of the upcoming congressional budget deliberations, we strongly encourage the Commission to invest the time now to review and revise the agency's shutdown plan (Management Directive 4.5) to avoid certain issues that arose as a result of the recent furlough of most of the NRC staff.

Based on our recent experience and our reading of the Anti-deficiency Act, we believe that the NRC has too narrowly defined the categories of personnel and activities appropriate to be retained under the Act's exception "for emergencies involving the safety of human life or protection of property." The overly narrow interpretation of that provision was manifested in the NRC's designation of approximately 300 staff as necessary to continue carrying out the agency's safety mission during the shutdown. It was also evidenced in the criteria established to determine whether a request for an emergency licensing action would qualify for processing during the furlough period.

Going first to the staffing issue, in light of the agency's public health and safety mission we question the decision to furlough almost 3600 of the roughly 3900 members of the NRC staff. Other federal government agencies, many of which do not directly regulate safety, apparently allowed a much greater percentage of personnel to continue working than did the NRC. A CNN report documented that only 36 percent of the total number of persons who receive a paycheck from the federal government (*excluding uniformed military personnel and civilian employees of DOD*) were furloughed.¹ In comparison, the NRC furloughed more than 90 percent of its workforce. We believe that most, if not all, Office of Nuclear Reactor Regulation personnel in the divisions of Safety Systems, Engineering, Operating Reactor Licensing, Risk Assessment, and Inspection and Regional Support should have been permitted to continue to perform their duties. A compelling case can be made that this staff should be "excepted" as necessary to process exigent licensing actions required to unnecessarily taking a reactor offline or impeding reactor startup.

¹ CNN Staff, *The Government Shutdown: What's closed, what's open?*, CNN, October 1, 2013, <http://www.cnn.com/2013/10/01/politics/government-shutdown-closings/>



With respect to the criteria used to determine whether an emergency licensing action should be processed, the agency's October 10, 2013 "Talking Points" excluded as a basis power generation to support the grid without additional information detailing "how the failure to support the grid would pose a specified and likely threat to human life and health." This criterion is unreasonable even under the Anti-deficiency Act's standard of imminent threat to the safety of human life and protection of property. Disruptions to the grid, whether initiated by a severe storm or otherwise, have been shown to have significant and potentially dangerous impacts well beyond affecting electricity to residences and commercial locations. These impacts cannot be overstated as they extend to the unavailability of city water supplies, 911 services, and gasoline, causing extensive mass transit delay and disruption, as well as impeding efforts by hospitals to administer critical medical services to name only a few.

Nuclear generation is a key to ensuring grid reliability, thereby preventing hardship that would otherwise be experienced by millions of Americans who may be without electricity. As such, the NRC should consider grid reliability to be a *per se* basis for processing exigent licensing actions necessary for continued safe operation or restart during a shutdown period. With no question that grid reliability is vital to protecting public health and safety, revising the criteria for processing emergency licensing actions is both appropriate and comports with the spirit of the Act.

Finally, as you and your colleagues review the agency's shutdown plan, we urge you not to lose sight of the fact that the NRC recovers virtually all of its overhead costs through annual license fees collected pursuant to 10 CFR Part 171. During a federal government shutdown, those fees continue to be collected, although no generic services are provided. Further, NRC work attributable to a licensee's applications for specific licensing actions, including emergency and exigent license amendments or notices of enforcement discretion to avoid unnecessary plant shutdowns or to support plant startup from an outage, are covered by specific fees imposed under 10 CFR Part 170. Accordingly, cost recovery with respect to almost all of the NRC's overhead and its services to licensees is assured with only a ten percent contribution from the overall federal budget. Because these fees are not paid directly to the NRC but must be appropriated through the normal budgeting/appropriations process, NEI urges the NRC engage Congress and the Administration to seek administrative or legislative relief that would allow fee-based activity to continue during a shutdown. Fundamental fairness to those paying user fees as well as good public policy supports continuity of most NRC activity during what typically is a limited shutdown period.

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Thank you for your consideration of this matter. Although it would be preferable not to have occasion to implement the agency's shutdown plan, the industry believes it is nevertheless important to revise the plan should it again become necessary to use it. If you have questions about the suggestions contained herein or would like to discuss them further, please do not hesitate to contact me or Tony Pietrangelo.

Sincerely,

A handwritten signature in black ink, appearing to read "Marvin S. Fertel". The signature is fluid and cursive, with the first name "Marvin" being the most prominent part.

Marvin S. Fertel

c: The Honorable Kristine L. Svinicki, Commissioner
The Honorable George Apostolakis, Commissioner
The Honorable William D. Magwood, IV, Commissioner
The Honorable William C. Ostendorff, Commissioner
Mr. Mark Satorious, EDO, NRC

Joosten, Sandy

From: FERTEL, Marvin <msf@nei.org>
Sent: Tuesday, October 29, 2013 2:31 PM
To: CHAIRMAN Resource
Cc: Svinicki, Kristine; Apostolakis, George; Magwood, William; CMROSTENDORFF Resource; mark.satorious@nrc.gov
Subject: NRC Operations During Government Shutdown
Attachments: SKMBT_75113102912410.pdf

Please see attached letter.

Marvin S. Fertel
President and Chief Executive Officer
Nuclear Energy Institute

1201 F Street, N.W., Suite 1100
Washington, D.C. 20004

P: 202.739.8125
E: msf@nei.org



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