

December 31, 2013

MEMORANDUM TO: Shana R. Helton, Chief
Rulemaking Branch
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation

FROM: Scott C. Sloan, Project Manager **/TInverso for RA/**
Rulemaking Branch
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation

SUBJECT: SUMMARY OF CATEGORY 2 PUBLIC MEETING TO DISCUSS
THE PART 26 SUBPART I (FATIGUE MANAGEMENT)
PROPOSED RULEMAKING

On December 4, 2013, the U.S. Nuclear Regulatory Commission (NRC) held a public meeting in Rockville, Maryland, to discuss preliminary proposed rule language and the latest draft revision of the Nuclear Energy Institute's (NEI's) guidance document, NEI 06-11, "Managing Personnel Fatigue at Nuclear Power Reactor Sites." The preliminary proposed rule language was published by the NRC on November 25, 2013. NEI submitted the draft revision of NEI 06-11 to the NRC on November 20, 2013, and the NRC publicly released the document on November 25, 2013. Both documents were posted to docket folder NRC-2009-0090 on www.regulations.gov.

The meeting was noticed on November 20, 2013. The notice is available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html#web-based-adams>, where the public can access the text and image files of NRC's public documents in the NRC's Agencywide Documents Access and Management System (ADAMS). The meeting notice can be found under ADAMS Accession No. ML13323A166.

The meeting was attended by 24 individuals, 11 of which participated through audio teleconferencing and webinar. The attendees consisted of representatives from the NRC staff and contractors, along with members of the nuclear power reactor community and organized labor. Enclosure 1 presents a summary of the meeting. Enclosure 2 provides a complete list of participants.

Enclosures:

1. Meeting Summary
2. Meeting Attendance List

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DATE	12/30/2013	12/30/2013	12/31/2013	12/31/2013

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Summary of December 4, 2013, Public Meeting to Discuss the Part 26 Subpart I (Fatigue Management) Proposed Rule

On December 4, 2013, the U.S. Nuclear Regulatory Commission (NRC) held a public meeting in Rockville, Maryland, to discuss preliminary proposed rule language and the latest draft revision of the Nuclear Energy Institute's (NEI's) guidance document, NEI 06-11, "Managing Personnel Fatigue at Nuclear Power Reactor Sites." The preliminary proposed rule language was published by the NRC on November 25, 2013. NEI submitted the draft revision of NEI 06-11 to the NRC on November 20, 2013, and the NRC publicly released the document on November 25, 2013. Both documents were posted to docket folder NRC-2009-0090 on www.regulations.gov.

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I. Opening Remarks and NRC Presentation

The public meeting began with brief opening remarks followed by a presentation detailing preliminary proposed rule language intended to promote the consistent use of terminology throughout Part 26. Most of the proposed rule language changes were met with agreement from all attendees, as the changes simply replaced one word or phrase with another. However, nuclear industry representatives expressed significant concern with the proposed changes to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 26.205, "Work hours," dealing with shift turnover. Attendees specifically wondered why the NRC was proposing to change the explanation of activities included in shift turnover from "those activities that are necessary to safely transfer responsibilities..." to "those activities that are necessary to transfer safety or security responsibilities..." Attendees questioned whether this proposed change was intended to change the population of individuals who can exclude time spent conducting shift turnover activities from the calculation of work hours. The NRC stated that there was no intention to change the population that can claim the exception, but the NRC instead thought that the revised language better explained the responsibilities that should be transferred in order to claim the exception. The NRC also stated that the staff had provided recommended guidance material to NEI, discussed at the September 18, 2013, public meeting, that provided an extensive explanation of how, when, and to whom the shift turnover exception should apply. The NRC agreed to consider the attendees' concerns and comments prior to publication of the proposed rule to ensure that the proposed rule would clearly communicate the intent of the language.

When discussing preliminary proposed rule language changes dealing with the calculation of break times, nuclear industry representatives asked if the NRC intended to give additional time back on breaks between work periods. The NRC stated that the intention of the preliminary proposed rule language was to make the means of calculation of work hours and break times more consistent, and the NRC realizes that this standardization permits licensees to calculate less time for a break period (therefore permitting an individual to work additional time).

Following discussion of the preliminary proposed rule language, the NRC presented its initial feedback on the latest draft revision of NEI 06-11. The NRC stated that while the organization and terminology throughout the document are generally improved when compared to the previous draft revision, a number of instances remain in which the guidelines either contradict rule language or the guidelines could be improved to assist the reader with compliance of the regulations. Further, the NRC stated that if the instances in which the guidance contradicts the rule language (existing or preliminary proposed rule language, as appropriate) are not rectified prior to the conclusion of the proposed rule development, then the NRC will treat these instances as exceptions or clarifications in the draft regulatory guide that will be published concurrently with the proposed rule.

The specific instances in which the draft guidance is inconsistent with the rule language are as follows:

- 1) On page 20, NEI 06-11 states “predictive maintenance on a covered system is not a covered activity.” The NRC stated its disagreement with such a categorical exclusion since predictive maintenance may indeed be a covered activity in certain circumstances. The NEI representatives agreed to change the wording.
- 2) On page 31, NEI 06-11 permits licensees to exclude from the calculation of work hours the time needed to deactivate emergency facilities following the conclusion of an emergency declaration. However, rule language only permits time spent during a declared emergency to be excluded from the calculation of work hours. Attendees explained that the current rule language presents an unintended consequence by placing licensees in an odd position of either delaying the exit from a declared emergency or creating a high number of work hour controls violations immediately upon the exit of the declared emergency. The NRC reminded attendees that this topic was presented in NEI’s petition for rulemaking (PRM), PRM-26-5, and it was discussed in a previous public meeting. During that public meeting, as documented in the public meeting summary (ADAMS Accession No. ML12072A047), the NRC recommended that the industry representatives present a safety basis for why the NRC needed to change the exception. The NRC explained that there had been no additional conversation on the matter in a public forum, and since no safety basis was presented either in the PRM or in follow-on public meetings, the NRC did not intend to change the exception as part of the proposed rule. The NRC explained that if stakeholders were still interested in a change to the exception, then they should deliver a safety basis as a public comment on the proposed rule.
- 3) On page 33, NEI 06-11 permits “short duration, infrequent, or irregular telephone calls” to be excluded from the calculation of work hours. The rule language permits licensees to exclude from the calculation of work hours any unscheduled incidental duties that do not exceed a nominal 30 minutes in duration. The NRC stated that the wording of this guidance language leaves the exception too open ended. The NEI representatives asked if it would be better to include a 30 minute time limit on the guidance. The NRC stated that adding the time limit would make the guidance consistent with the rule language.

- 4) On page 34, NEI 06-11 implies that time an individual spends traveling for a licensee may not be included in the calculation of work hours. However, on July 12, 2013, the NRC published preliminary proposed rule language that clarifies that time spent traveling for the licensee is work performed for the licensee, and, therefore, must be included in the calculation of work hours. The NEI representatives stated that this particular guidance language was inserted to deal with instances when an individual chooses to combine personal travel with travel required for work. The NRC stated that it had provided extensive recommended guidance material that would better address the intended situation. The NEI representatives stated that they would revisit the guidance language.
- 5) On page 36, NEI 06-11 displays a table that states that personnel donning and doffing radiation protective gear and transiting to and from a job site where continuous monitoring is required may be excluded from the calculation of work hours as a shift turnover activity. However, the NRC stated that the categorical exclusion of donning and doffing radiation protection gear is inconsistent with the rule language and the proposed guidance language provided by the NRC and discussed in a previous public meeting. The NRC stated that, while the donning and doffing of radiation protection gear and the transit to and from a job site may be excluded in some circumstances, it may not be excluded in others. The NRC referred back to the preliminary proposed rule language and recommended guidance material discussed at the September 18, 2013, public meeting, during which the NRC discussed three criteria that must be fulfilled in order to take advantage of the shift turnover exception. The NRC also stated that the table may mislead individuals as it does not include contextual information that will be provided in the rule language and the statement of considerations.
- 6) On page 19, a table in NEI 06-11 differs from the table in regulatory guide (RG) 5.73. After a brief discussion, it became clear that the NRC transmitted the errant table to NEI as part of recommended guidance changes. The NRC informed NEI that the table in RG 5.73 should be used. There were no objections.
- 7) On page 38, NEI 06-11 permits an exception from the minimum 10 hour break between work periods when rotating shifts are transitioning to a new time of day. The nuclear industry representatives stated that it is a common practice to use this exception when transitioning shift schedules. The NRC acknowledged that the rule language may be interpreted to permit this use, but the statement of considerations from the 2008 final rule is much clearer regarding the NRC's intent for how this exception should be employed. The NRC stated that it will consider clarifying the rule language as part of the proposed rule effort.
- 8) On page 77, NEI 06-11 permits giving individuals a 10-hour break in lieu of a for-cause fatigue assessment. The NRC stated that in a for-cause situation, a fatigue assessment is required. The NEI representatives acknowledged the mistake and agreed to amend the guidance language.

The NRC also discussed a number of areas of NEI 06-11 that would benefit from clarification and improvement. This feedback was generally accepted without contention. However, there were a few areas that generated significant conversation. Specifically, the NRC noted that

section 6.3 of NEI 06-11 included non-intuitive sequencing of short-term and cumulative work hour controls. In addition, section 6.3 presented the Minimum Days Off topic as part of the short-term fatigue control discussion. The NEI representatives stated that this sequencing was the result of the struggle they had encountered with the alternate table of contents provided by the NRC as recommended guidance changes. The NRC responded that the alternate table of contents and other recommended guidance changes were provided simply as recommendations, and NEI should use those recommendations as they wish. However, the NRC believes that a different organization of the guidance document would be more useful. The NEI representatives stated that presenting the document in technical terms (i.e., cumulative v. acute fatigue) would be useless to individuals at nuclear power plants. The NRC stated that the overall intent of guidance documents is to aid those subject to NRC regulations in complying with those regulations, and NEI should continue to write its guidance documents with that goal in mind. However, the NRC re-iterated that it retains the right to take exceptions or make clarifications to guidance documents in draft and final regulatory guides.

The NEI representatives stated that there was some confusion regarding how to obtain summaries and slides from previous public meetings. The NRC committed to placing all summaries and slides from previous meetings, and for all public meetings going forward, in the docket folder for this rulemaking effort (NRC-2009-0090) at www.regulations.gov.

II. Next Steps

The NRC committed to providing a meeting summary within 30 days. Further, the NRC committed to delivering detailed comments of NEI 06-11 to the public no later than January 15, 2014. The NRC proposed February 5, 2014, as the date for the next public meeting. The nuclear industry representatives stated that there may be some conflicts with that specific date, but the NEI committed to coordinating the date with the NRC.

**December 4, 2013, Public Meeting to Discuss the Part 26 Subpart I (Fatigue Management)
Proposed Rule**

Attendance List

NAME	AFFILIATION
Frank Mascitelli	Exelon
Billie Rooks	Southern Company
Peter Crinigan	Constellation
Jim Wheeler	Dominion
Nick Pappas	NEI
Eddie Humphries	Duke Energy
Jack Heyer	IBEW
Shana Helton	NRC
Kamishan Martin	NRC
Howard Benowitz	NRC
Theresa Barczy	NRC
David Desaulniers	NRC
Scott Sloan	NRC
Frank Farrow*	Southern California Edison
Tom Miller*	First Energy
Jana Bergman*	Curtiss Wright
Michael O'Keefe*	Certrec
Lee Marabella*	PSEG
Beth Murtha*	Areva
Kristi Branch*	Pacific Northwest National Laboratory
Valerie Barnes*	NRC
Sean Peters*	NRC
DaBin Ki*	NRC
Undine Shoop*	NRC

*Participated via Webinar/Conference Call