August 29, 2014

Mr. Joseph Brady
7726 Turnberry Lane
Stanley, NC 28164

SUBJECT: U.S. NUCLEAR REGULATORY COMMISSION RESPONSE TO LETTER REGARDING CITING FLOOD PROTECTION VIOLATIONS

Dear Mr. Brady:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your correspondence to Chairman Macfarlane dated October 26, 2013 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML14100A257). You questioned the NRC staff's regulatory basis for citing flood protection violations against Title 10 of the Code of Federal Regulations, Part 50 (10 CFR Part 50), Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," and whether these issues should have received an evaluation under 10 CFR 50.109, "Backfitting." You further provided specific examples to demonstrate your concerns.

We appreciate your perspectives. The staff recognizes the importance of flood protection, and we have increased our regulatory focus in this area following the 2011 Fukushima Dai-ichi accident in Japan and the 2011 Missouri River flooding at the Fort Calhoun Station. The NRC continues to look for opportunities to improve our programs to achieve the Principles of Good Regulation (Independence, Openness, Efficiency, Clarity, and Reliability) and the goals of the Reactor Oversight Process (Objective, Risk-informed, Predictable, and Understandable). Based on your concerns, we reviewed the basis for each citation for the specific examples you provided, the associated regulations, applicable Inspection Manual guidance, and associated generic communications.

The NRC's inspection and enforcement programs are designed to encourage licensees' prompt identification and comprehensive correction of violations of NRC requirements. The NRC recognizes that in some instances multiple applicable violations are associated with a given performance deficiency, and the inspectors and their management determine the most applicable requirement to cite in a notice of violation. Inspection reports and violations are documented in accordance with Inspection Manual Chapter (IMC) 0612, "Power Reactor Inspection Reports," (ADAMS Accession No. ML12244A483) and each report is reviewed by regional management prior to issuance. The NRC uses IMC 0609, "Significance Determination Process [SDP]," (ADAMS Accession No. ML101400479) to determine the safety or security significance of the inspection finding (i.e., performance deficiency). For those violations associated with inspection findings that could be greater than very low safety significance, the NRC convenes a Significance and Enforcement Review Panel (SERP) to review the preliminary significance and basis. The SERP decision-makers comprise management from the applicable regional office, the Office of Nuclear Reactor Regulation, the Office of Enforcement, and others as applicable. The SERP members review the licensee's deficient performance, the safety significance of the finding, and any applicable regulatory requirements that should be cited.

The staff reviewed each of the examples you provided, as well as several other recent flood-related findings, and determined that although the details varied based on specific circumstances at each site, the bases for citing the violations against Appendix B to 10 CFR Part 50 were justified and adequately documented, as further discussed below. Each of the noted examples underwent a review and approval process, and those of greater significance were evaluated and dispositioned by the SERP process. The staff also noted that the licensees accepted these findings and associated violations, and initiated appropriate corrective actions to address the associated performance deficiencies.

The requirements of Appendix B to 10 CFR Part 50 apply "to all activities affecting the safety-related functions" of structures, systems, and components (SSCs). The NRC does not treat all SSCs designed to mitigate flooding at a nuclear power plant as safety-related. However, if a flood mitigation SSC is designed to protect a safety-related SSC's safety-related function during a design-basis flood, and the flood mitigation SSC would not have provided the required flood protection such that the safety-related function of the safety-related SSC would be affected during a design basis flood, then Appendix B would be applicable. Based on our review of issued flooding findings, there has been no change in a regulatory position or interpretation, so the flooding examples that you cited do not meet the definition of "backfitting" found in 10 CFR 50.109.

Thank you for your interest in this issue. The NRC will continue to make enhancements to our guidance and/or training based on feedback from all stakeholders to ensure a consistent and predictable application of our regulations. We take our safety mission and regulatory responsibilities seriously, and will continue to do so within the bounds of our lawful authority.

If you have any further questions or concerns regarding this matter, please contact Mr. Ronald Frahm at (301) 415-2986, or at ronald.frahm@nrc.gov.

Sincerely,

/RA AHowe for/

Scott Morris, Director
Division of Inspection and Regional Support
Office of Nuclear Reactor Regulation
Nuclear Regulatory Commission

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Sincerely,

Scott Morris, Director
Division of Inspection and Regional Support
Office of Nuclear Reactor Regulation
Nuclear Regulatory Commission

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Incoming Accession No.: ML14100A257 **ADAMS Accession No.: ML14175A887**
*** see previous concurrence**

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Letter to Joseph Brady from Scott Morris dated _____

SUBJECT: U.S. NUCLEAR REGULATORY COMMISSION RESPONSE TO LETTER REGARDING FLOODING BACKFITTING

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