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December 2, 2015

Ms. Annette Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Rulemakings and Adjudications Staff

Subject: Comments on proposed amendment to 10 CFR 50.55a(b)(2)(viii) Section XI Condition(s) Concrete Containment Examinations (Docket ID NRC-2011-0088)

Project Number: 689

On behalf of the nuclear energy industry, the Nuclear Energy Institute (NEI)¹ appreciates the opportunity to provide comments on the proposed amendment to 10 CFR 50.55a(b)(2)(viii) Section XI Condition(s) Concrete Containment Examinations and respectfully requests that you review industry comments as noted in the attachment. The industry believes that the proposed amendment could be classified under the NRC's Backfit Rule. Our detailed comments attached outline the basis for this position.

Both the NRC and the industry continue to grapple with the need to reduce the cumulative impacts of NRC regulatory actions and process changes, duplicative or inconsistent requirements and guidance, and certain industry-driven activities and practices. Industry efforts in this area are driven by the need to ensure that attention and resources remain focused on safe, reliable facility operation and that any changes to NRC requirements and guidance result in improved safety and efficiency. We appreciate the NRC's consideration of our comments.

¹ The Nuclear Energy Institute (NEI) is the organization responsible for establishing unified industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel cycle facilities, nuclear materials licensees, and other organizations and entities involved in the nuclear energy industry.

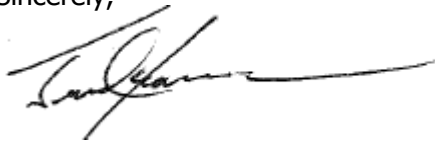
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If you have any questions or require additional information, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerud Hanson", with a long horizontal flourish extending to the right.

Jerud Hanson

Attachment

c: NRC Document Control Desk

**Comments on Proposed Rule
"Incorporation by Reference of ASME Codes and Code Cases"
Docket ID NRC-2011-0088**

As written, the revisions to 10 C.F.R. §§ 50.55a (b)(2)(viii)(H) and (b)(2)(viii)(I), which affect implementation of the IWL subsection of the ASME Section XI Code, should be analyzed as backfits. The supplementary information published with the proposed rule identifies three specific categories of code changes that require either a documented evaluation, or a full backfitting analysis:

The incorporation by reference and adoption of a requirement mandating the use of a later ASME BPV Code or OM Code may constitute backfitting in some circumstances. In these cases, the NRC would perform a backfit analysis or documented evaluation in accordance with § 50.109. These include the following:

1. When the NRC endorses a later provision of the ASME BPV Code or OM Code that takes a substantially different direction from the existing requirements, the action is treated as a backfit (*e.g.*, 61 FR 41303 [August 8, 1996]).
2. When the NRC requires implementation of a later ASME BPV Code or OM Code provision on an expedited basis, the action is treated as a backfit. This applies when implementation is required sooner than it would be required if the NRC simply endorsed the Code without any expedited language (*e.g.*, 64 FR 51370 [September 22, 1999]).
3. When the NRC takes an exception to an ASME BPV Code or OM Code provision and imposes a requirement that is substantially different from the existing requirement as well as substantially different from the later Code (*e.g.*, 67 FR 60529 [September 26, 2002]).

80 Fed. Reg. 56850. As written, the revision to § (b)(2)(viii)(H) – which conditions use of ASME BPV Code Section IX – could be interpreted as imposing a requirement that is “substantially different” from the existing requirement. Specifically, it appears that the proposed revision to § (b)(2)(viii)(H) expands the current requirement to report the results of evaluations when “suspect” conditions exist per IWL-2512(a), to also require reporting of evaluations performed pursuant to IWL-2512(b) that do not necessarily involve “suspect” or unacceptable conditions, or aggressive environments. Likewise, the proposed changes to § (b)(2)(viii)(I) – which also conditions use of Section IX – appear to impose a significant change from the ASME Section XI, Subsection IWL, paragraph IWL-2512(b) code-required frequency of “at periodic intervals not to exceed 10 years” to the proposed frequency of “at periodic intervals not to exceed 5 years” for plants during the period of extended operation. If interpreted in this way, the revisions to §§ (b)(2)(viii)(H) and (I) would fall within category (3) and should be analyzed as backfits.

These proposed changes to §§ (b)(2)(viii)(H) and (b)(2)(viii)(I) are not required by the associated ASME Code paragraphs and, if interpreted as described above, would increase

burden on licensees by imposing requirements for detailed reporting of routine evaluations of potentially acceptable conditions and increasing the required frequency of such evaluations. Thus, we respectfully request that the NRC either perform the required backfitting analysis, or incorporate the following changes in the final rule:

1. Endorse the ASME Section XI, Subsection IWL, paragraph IWL-2512 code as written including the periodic evaluation intervals per IWL-2512(b) of the not to exceed 10 years frequency.
2. Clarify that the reporting requirements for evaluations are only for evaluations of “suspect” areas per IWL-2512(a) or unacceptable conditions and that periodic evaluations conducted per IWL-2512(b) need not be reported in the ISI Summary Report required by IWA-6000 unless the results of those evaluations or the opportunistic examination results determine that “suspect” or unacceptable conditions exist.

The industry does agree with the portion of the proposed § (b)(2)(viii)(I), which requires IWL-2512(b)(6) examination of below grade concrete if excavated for any reason, instead of conducting such an examination only when an aggressive environment is present. This change is consistent with the GALL Report and since it is opportunistic (i.e. when excavated for any reason), industry does not consider it to be a significant change.

It should also be noted that the associated GALL Report recommendations for groundwater monitoring and concrete evaluations for structures at the frequency of not to exceed 5 years were added in 2010 by NUREG 1801 Rev. 2. Plants entering the period of extended operation are not all committed to these associated NUREG 1801 Rev. 2 recommendations and that frequency. Even considering the recommendations of RIS 2011-05 for consideration of NUREG 1801 Rev. 2 changes to inform aging management programs, any such consideration of program changes were stated as voluntary and therefore not subject to the backfitting rule. Therefore, a change to require all licensees to meet NUREG 1801 Rev. 2 recommendations during the period of extended operation for frequency of certain evaluations would be a significant change for some licensees and should be analyzed as a backfit. Additionally, there may be no reason to change the associated aging management programs based on site specific conditions and operating experience.