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NUCLEAR ENERGY INSTITUTE

March 20, 2017

Ms. Cindy Bladey
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Mail Stop: OWFN-12-H08
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

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Subject: Industry Perspective on Draft Regulatory Issue Summary Regarding Certificate of Compliance Corrections and Revisions (Docket Id NRC-2016-0255)

Project Number: 689

Dear Ms. Bladey:

On behalf of the nuclear energy industry, the Nuclear Energy Institute (NEI)¹ wishes to thank the U.S. Nuclear Regulatory Commission (NRC) for providing an opportunity to comment on the draft Regulatory Issue Summary 2016-XX "Administration of 10 CFR Part 72 Certificate of Compliance Corrections and Revisions". As a follow-up to an NRC public meeting on March 28th, 2013, NEI provided comments on the proposed process at that time (Revision 1). Those comments expressed industry concerns with the proposed process, while endorsing the goals and objectives of establishing a stable and predictable regulatory framework for dry cask storage. The draft RIS has largely addressed those concerns with respect to the proposed corrections process, however we feel that additional clarity can be added to the revisions aspects of the proposed process to ensure a common understanding and effective implementation.

Industry believes that the corrections process in the RIS is a necessary and valuable improvement in NRC's regulatory framework. However, the revisions process should be viewed as a largely interim measure until more substantive improvements to risk-inform the regulatory framework are achieved. These improvements are currently being pursued in an ongoing effort between industry and NRC to develop a graded-approach to the level of detail in the CoC as described in RIRP-I-16-01. This broader regulatory framework improvement effort calls for the standardization of the Certificate of Compliance (CoC) to a more risk-appropriate level of detail, thereby reducing the number of CoC amendments needed to only those having a risk-informed nexus to safety. RIRP-I-16-01 is modeled after NRC's successful efforts to improve reactor Technical Specifications in

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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the 1990's and addresses the principles articulated in Reference 2. Industry believes that completion of the broader improvements being sought in RIRP-I-16-01 is an essential element to ensuring a more efficient used fuel storage framework and will result in the need for fewer amendments, revisions and corrections.

Corrections

A formal, written process for making corrections to CoCs has been long overdue and will remain necessary even after the completion of RIRP-I-16-01. While careful scrutiny and attention to detail is involved in developing and reviewing the CoC to ensure that it is consistent with the cask's Final Safety Analysis Report (FSAR) and NRC Safety Evaluation Report (SER), which encompasses the design and licensing basis of the storage system design, inadvertent errors have still been identified. Because of the need for rulemaking for amendments to CoCs, it is vital that there be a transparent and most importantly, efficient process to make corrections to Part 72 CoCs without needing the lengthy and time-consuming rulemaking process. The outline of the corrections process detailed in the draft RIS achieves this goal through the use of the direct final rule process without the need for a public comment period, as permitted by the Administrative Procedures Act.

Revisions

To date, the revision process has been used four times by three CoC holders to revise existing CoC amendments. When first proposed by the NRC in 2013, many in industry believed that this process would provide a more efficient pathway to make changes to an approved storage system design basis rather than the amendment process. However, the experience gained from the review and implementation of those revisions was less efficient than the amendment process and not indicative of a stable and efficient regulatory approval process. These past experiences have led to industry (both general licensees and CoC holders) to be very cautious in approaching the revision process in the future.

Of specific concern to industry is that the revision process, by its inherent nature, requires every user of the amendment being revised to incorporate the new revision, regardless of whether they either need or benefit from the changes incorporated via revision. While there may be cases where all or the majority of the users of a storage system amendment will benefit from a specific revision, that has not been the case in the recent experience. Therefore, all users of that specific storage system amendment must update necessary paperwork, including, but not limited to, site procedures, the 72.212 report and hardware Certificates of Conformance. Additionally, the NRC has previously requested that licensees transmit new cask registration letters as detailed in 10 CFR 72.212(b)(2). Resubmittal of cask registration letters for revisions is not a regulatory requirement in 10 CFR 72. Cask registration letters are only required by 10 CFR 72.212(b)(2) to record the CoC and amendment number when a cask is first loaded, or if the cask is recertified to meet the requirements of a later amendment. Therefore, the industry strongly believes that the resubmittal of cask registration letters for revisions is a purely administrative burden without any commensurate safety benefit. This provision should be removed from the draft RIS. Since a new CoC revision supersedes the previous version of the CoC by definition, the required update to the site's 72.212 report to adopt the revision is sufficient regulatory recordkeeping in this regard.

To resolve our remaining concerns, industry is providing the following recommendations to be added to the RIS to provide additional clarity and regulatory certainty.

- 1) As described in the draft RIS, the NRC has added, in some instances, a condition to the revised or corrected CoC providing general licensees an implementation period (e.g., 180 days). An implementation period is a vital component for CoC revisions and corrections because the 72.212 report update required for a general licensee to formally adopt the CoC revision or correction cannot be approved until the CoC revision or correction is effective (i.e., published in 10 CFR 72.214). General licensees must necessarily await the effective date of the CoC revision or correction before the 72.212 report update is approved to remain in full compliance with the conditions of the 10 CFR 72 general license. Therefore, the NRC should revise the RIS to ensure that an implementation period is established for all CoC revisions and corrections to allow general licensees a sufficient period of time to complete the necessary paperwork to formally adopt the CoC revision or correction. The implementation period for any particular CoC revision or correction should be established based on the complexity of the changes, with a minimum implementation period of 180 days from the date the CoC revision or correction becomes effective. This will permit the general licensee(s) who needs the CoC revision or correction to adopt it quickly after the effective date, but allow other general licensees to schedule the adoption at an appropriate time within the implementation period based on resource availability.

- 2) As stipulated in the draft RIS,

“...the NRC has accepted documentation provided by the CoC holders indicating that the general licensees who may be impacted by the revision voluntarily support the revision and will willingly comply with the revised CoC in determining that the revision is not a backfit.”

The general licensee has historically been required to provide this support in conjunction with the submittal of the revision. During the review and approval process there is the potential for the proposed CoC to be modified and for the NRC to stipulate additional conditions and limitations in the CoC that were not originally envisioned at the time of submittal. Industry is concerned that general licensees that provide support for the revision at the time of submittal are agreeing to voluntarily adopt a CoC revision that may change during the review and approval process. Therefore, general licensees should have the opportunity to withdraw their support after the time at which the technical review is complete and the draft CoC has been finalized. If a general licensee were to withdraw their consent, the proposed revision would be modified to become an amendment, which would then be voluntarily adopted by those general licensees who need the modification (versus a mandatory adoption by all impacted general licensees).

We are eager to continue dialogue on this subject to ensure that these processes are well understood, transparent and efficient, by all stakeholders, including NRC, general licensees, CoC holders and the public. We would encourage the NRC to incorporate these recommendations into the RIS and provide an opportunity for additional stakeholder input on the updated RIS.

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References:

1. Letter, McCullum to Lombard, "Industry response to NRC's March 28, 2013 meeting on obtaining stakeholder input on identifying enhancements to the administration of 10 CFR Part 72 Certificates of Compliance and their associated amendments", dated April 11, 2013
2. Petition for Rulemaking by Anthony R. Pietrangelo, "Spent Fuel Cask Certificate of Compliance Format and Content" October 18, 2012 (PRM 72-7)

Sincerely,



Kristopher Cummings

cc: Mr. Michael Layton, NMSS/DSFM, NRC
Mr. Tony Hsia, NMSS/DSFM, NRC
Mr. John McKirgan, NMSS/DSFM/SFLB, NRC
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