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December 20, 2017

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

Subject: Comments on Petition for Rulemaking: Fire Protection Compensatory Measures (Docket No. PRM-50-115; NRC-2017-0132)

Project Number: 689

On behalf of the nuclear energy industry, the Nuclear Energy Institute (NEI)¹ appreciates the opportunity to provide comments on the Petition for Rulemaking: "Fire Protection Compensatory Measures." The industry does not believe that this rulemaking should be undertaken with the following comments outlining the basis for this position:

1. A 1994 petition under 10 CFR 2.206 related to fire protection questioned the validity of fire protection compensatory measures. This petition was considered by the NRC and denied. Specifically, the NRC concluded in Director's Decision DD-96-03 that fire protection compensatory measures, as approved by the NRC staff on a plant-specific basis, "continue to ensure public health and safety." Fire protection compensatory measures have undergone additional evaluation since this decision, as part of the resolution of the multiple spurious operations issue, and the NRC staff has again concluded that they adequately protect public health and safety as approved by the NRC staff on a plant-specific basis. Therefore, the current framework adequately ensures public health and safety.
2. There are existing regulatory requirements to ensure that appropriate attention is given to fire protection compensatory measures. The NRC concluded in Generic Letters 86-10, "Implementation of Fire Protection Requirements," and 88-12, "Removal of Fire Protection Requirements from Technical Specifications," that existing administrative controls and NRC oversight via these administrative controls are sufficient to ensure public health and safety with respect to fire protection.

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.

3. The petition contends that rulemaking is necessary to address deficiencies associated with fire protection compensatory measures. Specifically, the petition states the following (with NEI comments under each):
 - *The guidance documents are not regulations and therefore convey unenforceable expectations.*
 - Compensatory measures are required by a plant's Facility Operating License, through the Fire Protection License Condition. The Fire Protection License Condition requires the licensee to: "implement and maintain in effect all provisions of the approved Fire Protection Program as described in the [Updated Final Safety Analysis report] UFSAR, and as approved in the NRC Safety Evaluation Reports [SERs]...", which then includes a listing of SERs including those that approved the station's compensatory measures. Contained within the fire protection program are the licensee commitments that have been approved by the NRC concerning compensatory measures. Failing to implement the compensatory measures would therefore be a violation of the plant's License Condition and contrary to the UFSAR requirements, and are enforceable.
 - *The guidance documents are not clear, creating confusion for licensees, NRC inspectors and reviewers, and the public about what constitutes an acceptable substitute for compliance with fire protection regulations as well as the permissible durations of the substitutions.*
 - Facility-specific requirements for compensatory measures are sufficiently clear for licensees, the NRC, and the public. 10 CFR 50.48(a) requires each facility have a Fire Protection Program, and stipulates what that program must contain, including a requirement for administrative controls. The fire protection program is either included directly in the UFSAR, or included in the UFSAR by reference. As described above, expectations for fire protection compensatory measures are explicitly described for each facility, and are well-understood by the licensee and the NRC.
 - *The guidance documents were not developed through an open process, thus depriving the public opportunities to weigh in on the acceptability of various compensatory measures.*
 - Sufficient opportunities for public comment were available in development of related guidance documents, and the public had ample opportunity to participate. Specifically, Regulatory Guide 1.189, which references treatment of fire protection compensatory measures, was published for public comment in April 2009, and the NRC staff responded to over 90 public comments on this regulatory guide.
4. Much of the technical basis presented in the petition for rulemaking relies on a contractor report on fire protection compensatory measures, NUREG/CR-7135, "Compensatory and Alternative Regulatory Measures for Nuclear Power Plant Fire Protection." The industry previously commented on the issues with the report in a September 25, 2013 letter, many of which relate to the fact that the report does not accurately characterize implementation of fire protection compensatory measures.

Fire is a risk significant concern at every nuclear utility and each plant has appropriately established a fire prevention culture that is inculcated within work processes and organizational behaviors. The industry strongly considers the current regulatory governance and oversight to be sufficient to ensure a rigorous fire protection program is implemented at each nuclear station. And, contrary to the assertions in the petition, the industry views the volume of LERs referenced to be indicative of a program that provides little ambiguity

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or flexibility in implementation. Against this background, we ask the NRC to consider that there is not a compelling need for rulemaking in this instance.

If you have any questions or require additional information, please contact me or Victoria Anderson (vka@nei.org).

Sincerely,



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Newell, Brian

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Sent: Wednesday, December 20, 2017 8:33 AM
To: Vietti-Cook, Annette
Cc: McCree, Victor; Giitter, Joseph; Holian, Brian; Robinson, Jay; Kratchman, Jessica
Subject: [External_Sender] Comments on Petition for Rulemaking: Fire Protection Compensatory Measures
Attachments: 12-20-17_Comments on Petition for Rulemaking_ Fire Protection Compensato....pdf

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3. The petition contends that rulemaking is necessary to address deficiencies associated with fire protection compensatory measures. Specifically, the petition states the following (with NEI comments under each):
 - *The guidance documents are not regulations and therefore convey unenforceable expectations.*
 - Compensatory measures are required by a plant's Facility Operating License, through the Fire Protection License Condition. The Fire Protection License Condition requires the licensee to: "implement and maintain in effect all provisions of the approved Fire Protection Program as described in the [Updated Final Safety Analysis report] UFSAR, and as approved in the NRC Safety Evaluation Reports [SERs]...", which then includes a listing of SERs including those that approved the station's compensatory measures. Contained within the fire protection program are the licensee commitments that have been approved by the NRC concerning compensatory

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