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Draft Letter to the Nuclear Energy Institute Regarding the Clarification of Regulatory Paths for Lead Test Assemblies

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Draft Letter to Nuclear Energy Institute Regarding Clarification of Regulatory Paths for Lead Test Assemblies

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General Comment

1. The discussion indicates that "[s]ome licensees obtained prior NRC approval via license amendments approving changes to Technical Specification (TS) 4.2.1 or exemptions from 10 CFR 50.46 for their LTA [lead test assembly] campaigns, or both. Other licensees conducted LTA campaigns under 10 CFR 50.59 without prior NRC approval." However, it is not indicated whether those actions were deemed by the NRC as appropriate. Did or should enforcement have been taken as a result of significant changes to a licensee facility which could affect the radiological consequences of a design bases event/accident without prior NRC approval? It is recognized that there is a 5-year period after which no civil penalty would be assessed, but the associated violation could/should have still been issued.
2. The discussion represents the submittal of an amendment related to LTAs as a "choice," without the appropriate context. The necessity for an amendment would only constitute a choice, if the provisions of 10 CFR 50.59 are not met. This should be revised to more closely match the actual regulatory process.
3. The discussion indicates that "[b]ecause LTAs may, by definition, incorporate new design features or materials, this sentence can be read as separate from the other limitations placed on fuel assemblies." Why? If it is meant to be separate from the connected discussion, why wasn't a new paragraph started consistent with standard use of paragraph structure? Additionally, the generic TS language was taken from another NRC regulatory document and that document did not address nor suggest the new interpretation of an NRC requirement being proposed in a letter to industry. Given that by

definition the

LTA would incorporate new design features or materials, that suggests that a review under 10 CFR 50.59 would apply and therefore require prior-NRC approval.

4. How can the Reactor Oversight Process, which is voluntary, appropriately review and characterize the improper implementation of LTAs within NRC requirements as it is currently risk informed? Plus given the untested, unreviewed, and unapproved nature of the fuel, combined with the lack of regulatory requirements would the NRC inspectors be able to appropriately characterize the increase in radiological consequences (large early release frequency - as the use of the core damage frequency would be totally ineffectual as the use of a different fuel does not appear to be an input into any of the inspection procedures supporting the significance determination process for the ROP). As a licensing issue, this should probably be excluded from the ROP and regular enforcement be applied. The response should reflect the proper enforcement consequence for the inappropriate use of LTAs outside of the appropriate approved licensing basis.

5. The discussion should be clarified regarding this sentence "[h]istorically, LTA campaigns have ranged from a few rods to 2 percent of the core, depending on the nature of the design and the degree of prior characterization of the LTAs performance." Historically, weren't the numbers reviewed and approved by the NRC before use? Maybe this should indicate that historically the NRC staff has limited the number of LTAs able to be used and required prior NRC approval for any increase as the potential to significantly increase the radiological consequences of a Chapter 15 accident has not be quantified given the unapproved nature of the LTAs as discussed.

6. It does not seem appropriate to circumvent 10 CFR 50.59 with the criteria proposed here of limited number and nonlimiting core regions, without the use of an exemption or new rulemaking. Regardless of the location should the fuel adversely impact the "fundamental core dynamics and physics predictions, accident progression, and/or the radiological source term such that core operating limits, UFSAR Chapter 15 transient and accident analyses, or approved analytical methods were no longer applicable and/or bounding," that prior NRC approval should be need. Or is the intent for the NRC to actual issue a rule so that this new interpretation is actually consistent with the requirements in Title 10 to the Code of Federal Regulations?

7. The discussion indicates "[t]hese methods have already been approved by the NRC through the topical report approval process and continue to be acceptable for use within the scope of their approval." The letter should reflect that the use of approved codes for the LTA fuel types not already reviewed, would be outside the NRC's approval for the method and would require prior approval for the new use in accordance with 10 CFR 50.59.

In closing, this letter appears to be providing guidance that contradicts existing NRC requirements, by misquoting, misapplying, and/or ignoring previous precedents, positions, and requirements. As such, consideration should be made to not issuing or significantly revising it.