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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

The NRC should not issue this letter.

The draft letter to NEI provides a wholly new interpretation, not a clarification, of the requirements of Section 4.2.1 of the technical specifications (TS).

The new interpretation proffered in the draft NEI letter is contrary to the regulatory construct for the design features for fuel assemblies to be included in TSs in accordance with 10 CFR 50.36(c)(4).

The Atomic Energy Act section 189a. requires the Commission to afford interested persons an opportunity for a hearing on the granting, suspending, revoking or amending of any license. A licensee cannot amend the terms of its license unilaterally. Agency approval or authorization is a necessary component of Commission action that affords a hearing opportunity under section 189a., but not all agency approvals granted constitute de facto license amendments. To determine whether an approval constitutes a de facto license amendment, there are two key factors to consider: Whether the approval (1) granted the licensee any greater operating authority or (2) otherwise altered the original terms of a license.

The draft letter to NEI interpretation of TS 4.2.1 can be considered an agency approval or authorization. Thus it is appropriate to examine the key factors that must be considered to determine if a de facto license amendment may be involved. The interpretation attempts to grant greater operating authority by permitting the use of fuel assemblies (LTAs) with cladding material and/or fuel that differs from that described in the Design Features section of TS. This also constitutes

an alteration from the original terms which in accordance with the requirements of 10 CFR 50.36 incorporated specific restrictions on fuel assembly cladding and fuel type. Thus the interpretation could only be implemented by use of a process that affords interested persons an opportunity for a hearing, such as the license amendment process.

The draft letter to NEI provides a faulty analysis of the requirements in 10 CFR 50.59, for use of LTAs. See Harold Chernoff's non-concurrence.

The draft letter to NEI provides an interpretation of the need for exemptions from 10 CFR 50.46 that is different than a long history of exemptions issued for use of LTAs. This new interpretation is also contrary to the requirements in 10 CFR 50.57 regarding the licensee operating the facility in conformance with the rules and regulations of the Commission.

Since the draft letter to NEI provides wholly new interpretations of regulatory requirements that have a substantial effect on licensee activities, as well as on public stakeholders, the guidance should be considered a rule.

The draft letter to NEI provides guidance that is inconsistent with the NRC's Principles of Good Regulation.

The NRC should not issue this letter.