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General Comment

Pages 4 and 5 of the NRCs draft letter to NEI discuss use of approved methods. The letter states, in part, that: The NRC staffs position is that approved methods should be used wherever possible; however, approved methods
for the LTA fuel (e.g., assembly-specific CHF correlations) may not exist. In those instances, the licensee should perform
a conservative evaluation of the LTAs using the approved codes and methods for the core.

The draft letter to NEI also states that:

"The evaluation of LTA campaigns necessarily requires some engineering judgment due to incomplete representative
data availability prior to irradiation of the LTAs, and evaluation may necessitate modifications to approved codes and
methods or the use of such codes and methods outside the bounds for which they were explicitly approved."

The Perry decision (Commission Memorandum and Order CLI 96-12, 44 NRC 315, December 6, 1996, ADAMS
Accession No. ML16355A465) is sometimes referenced in the context of establishing or refining the NRC criteria for
when a change being proposed by a licensee requires an application for an amendment of their operating license.

Section 189a of the Atomic Energy Act (AEA) requires that the Commission provide interested parties notice of, and an opportunity for a hearing on, the granting, suspending, revoking, or amending of any license or construction permit.
In the Perry decision, the Commission looked at the legislative history of the AEA. As discussed on page 326 of the Perry decision, the Commission stated that:

"That history, unfortunately does not clarify what constitutes a license amendment within the meaning of section 189a. But it does make clear that Congress wished to provide hearing rights for only certain classes of agency action, not all. As initially proposed, the AEA did not contain any hearing rights provision. A later draft proposed a hearing opportunity to parties materially interested in any 'agency action. But this provision was found too broad, broader than it was intended to be, and led to section 189a's very specific list of Commission actions warranting hearing rights. If a form of Commission action does not fall within the limited categories enumerated in section 189a, the Commission need not grant a hearing."

"In evaluating whether challenged NRC authorizations effected license amendments within the meaning of section 189a, courts repeatedly have considered the same key factors: did the challenged approval grant the licensee any greater operating authority, or otherwise alter the original terms of a license? If so, hearing rights likely were implicated.

On page 327 of the Perry decision, the Commission cited applicable case law that provided examples where certain NRC approvals did not trigger AEA section 189a hearing rights. The Commission clarified its position as follows:

"Where the NRC approval does not permit the licensee to operate in any greater capacity than originally prescribed and all relevant safety regulations and license terms remain applicable, the NRC approval does not amend the license."

Only those actions falling beyond the ambit of prescriptive authority granted under the license necessitate a license amendment.

Clearly, if a licensee is performing an evaluation that modifies approved codes and methods or the use of codes and methods outside the bounds for which they were explicitly approved, then the licensee would be operating with greater operating authority than was granted for use of those approved codes and methods. As such, consistent with the Perry decision, and contrary to the positions stated in the draft letter to NEI, the licensee would need to request prior

NRC
approval via a license amendment request under the specified circumstances.

This draft NRC letter should not be issued.