



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

August 6, 2020

Dr. Jennifer L. Uhle
Vice President, Generation & Suppliers
1201 F Street, NW, Suite 1100
Washington, DC 20004

SUBJECT: RESPONSE TO NUCLEAR ENERGY INSTITUTE REQUEST FOR CHANGES TO
THE SIGNIFICANCE DETERMINATION APPEAL PROCESS, PROJECT
NUMBER 689

Dear Dr. Uhle:

This letter acknowledges receipt of an August 28, 2019, letter to the U.S. Nuclear Regulatory Commission (NRC) from the Nuclear Energy Institute (NEI), "Request for Changes to the Significance Determination Appeal Process" (Agencywide Documents Access and Management System (ADAMS) Accession No. ML19261A190). Mr. James Slider from NEI and other industry representatives briefed the NRC on these recommendations during a public meeting on September 25, 2019. A summary of this meeting is available at ADAMS Accession No. ML19291D631.

Your letter outlines several concerns with the current Significance Determination Process (SDP) appeal process and provides recommendations to address those concerns. Guided by the Principles of Good Regulation, the staff considered the entire SDP, including the appeal portion of the process, and discussed your concerns with the Office of the General Counsel, the Office of Enforcement, and the Regional Offices. We appreciate your views on our process, realizing that each one reflects a point where the process does not appear to meet the needs of your constituency. We have devoted some significant conversations to your points and want to provide you the results of our discussions. Each of your concerns are provided in short form below along with our perspective.

NEI concern #1: The standard of review for appeals is too narrow.

The staff determined the SDP, at various steps, allows for new, pertinent information to be introduced and considered. The information considered at the appeal stage in the process is appropriate given the degree of information exchange that occurs prior to the final significance determination. Licensees are afforded the opportunity to rebut and respond to the agency's preliminary significance determination input information at several stages in the process, and to provide additional information in-writing or in-person at a Regulatory Conference. It is after this additional opportunity that the agency arrives at a final significance determination, and the

appeal process can be entered. The SDP is a part of the larger operating reactor assessment program and uses the concept of best available information to balance the desire for accurate information against the need for timely decision-making and implementation of regulatory follow-up actions. Expanding an appeal process with additional steps would run counter to making timely decisions and implementing timely regulatory actions based upon the best available information, for a process that in most instances is expected to be used to appeal findings of low-to-moderate safety or security significance.

However, to improve clarity and openness in the exchange of information needed for decision-making, the staff plans to implement two enhancements to the existing appeal process described in Inspection Manual Chapter (IMC) 0609, Attachment 2:

- 1) Revise internal guidance related to the preliminary significance determination letter. In Form 3-II, available in Appendix B to the NRC Enforcement Manual, additional guidance in the letter formulation instructions will be added to promote clear identification of the differences in NRC assumptions compared to known licensee assumptions that are pertinent to the risk determination, in order to allow the licensee an opportunity to understand and address these differences in their response to the preliminary significance determination letter or at a Regulatory Conference. This will help to ensure that the key points related to the significance from both the licensee and the NRC perspectives are thoroughly discussed, even if not fully agreed upon.
- 2) Clarify the opportunity for a public meeting. As pointed out in your letter, the SDP appeal process guidance does not explicitly include a default opportunity for an appeal to be presented in-person. However, the current process also does not exclude an opportunity for a public meeting to discuss an appeal. To improve clarity, the staff will update the SDP appeal guidance in IMC 0609, Attachment 2, to make it clear that the opportunity exists for a public meeting to discuss an appeal that meets the merit guidelines and was therefore accepted for appeal review.

NEI concern #2: Appeals must be made to the official who made the initial decision.

While we disagree with your characterization of the appeal process as unfair, we understand your point of view and agree that there can be an appearance of an appeal review that is not sufficiently independent if the appeal letter is sent to the same office from which the final significance decision was communicated. While both the preliminary and final significance determination decisions are made by a Significance and Enforcement Review Panel (SERP), typically consisting of Division Directors or their designees, the final panel decision is most often communicated formally under a Regional Administrator signature. In order to provide more assurance that an independent process is effectively used and communicated, the Director of the Office of Nuclear Reactor Regulation (NRR) will review and formally concur on any response to an appeal request. For security or emergency preparedness issues, similarly, the Director of the Office of Nuclear Security and Incident Response (NSIR) will review and formally concur on any response to an appeal request. This includes the response when the decision is made to not accept an appeal for review (i.e., the appeal request lacked sufficient merit based on the guidance in IMC 0609, Attachment 2, Section 3) and the response indicating the final outcome of an accepted appeal request. Once an appeal is accepted for review, the process will continue to use the resources in regions and headquarters to make an appeal decision, consistent with IMC 0609, Attachment 2, Section 5.c.

NEI concern #3: The appeal process itself is documented in an Inspection Manual Chapter, rather than in an NRC Management Directive.

The staff determined that documenting the appeal process in an Inspection Manual Chapter is appropriate because the responsibility for implementing processes related to the Reactor Oversight Process (ROP) lay squarely within the authority of NRR and its associated Divisions. The SDP, as defined by IMC 0609, describes how staff determine the risk significance of a finding, which is then used in other NRR processes to evaluate the appropriate level of inspection. Unlike backfit, this process does not have a bearing on the licensing basis or similar legal requirements imposed upon a licensee. Consistent with other ROP programs, the implementing guidance should remain as a separate IMC. This is consistent with the direction in the Handbook for MD 8.13, Section II.A.2.

If you have any questions related to this response, please contact Anthony Masters by telephone at 301-415-0108 or by e-mail to anthony.masters@nrc.gov.

Sincerely,

Ho K. Nieh, Director
Office of Nuclear Reactor Regulation

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***Via E-mail NRR-106**

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