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December 20, 2019

Mr. Ho K. Nieh  
Director, Office of Nuclear Reactor Regulation  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

**Subject:** Treatment of FLEX in the Significance Determination Process

**Project Number: 689**

Dear Mr. Nieh:

We understand that the NRC is about to implement changes to NRC Inspection Manual Chapter (IMC) 0609, Significance Determination Process (SDP), Appendix A<sup>1</sup> and Attachment 04<sup>2</sup> that are intended to address the use of FLEX<sup>3</sup> strategies and equipment. Nuclear Energy Institute (NEI)<sup>4</sup> representatives have expressed significant concerns about these changes in several public meetings since the NRC staff first shared a draft of the proposal in July 2019.<sup>5</sup> We believe the pending changes to Appendix A would disincentivize safety and this unintended consequence was not adequately considered by the NRC staff in its formulation of the SDP revisions.

In 2016, NEI issued NEI 16-06, "Guidance for Optimizing the Use of Portable Equipment,"<sup>6</sup> to help the industry maximize the safety benefit of the equipment purchased to carry out the FLEX strategies. This document identifies numerous ways in which this equipment can be deployed to provide diverse or redundant means of

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<sup>1</sup> Inspection Manual Chapter 0609, Appendix A, "The Significance Determination Process for Findings At-Power," undated draft, ADAMS accession number ML19198A183.

<sup>2</sup> Inspection Manual Chapter 0609, Attachment 04, "Initial Characterization of Findings," undated draft, ADAMS accession number ML19198A195.

<sup>3</sup> Described in NEI 12-06, "Diverse and Flexible Coping Strategies (FLEX) Implementation Guide".

<sup>4</sup> The Nuclear Energy Institute (NEI) is responsible for establishing unified policy on behalf of its members relating to matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect and engineering firms, fuel cycle facilities, nuclear materials licensees, and other organizations involved in the nuclear energy industry.

<sup>5</sup> Written comments were transmitted to NRC via email from James Slider (NEI) to Alex Garmoe (NRC), et.al., August 26, 2019, ADAMS accession number ML19239A016.

<sup>6</sup> Transmitted to NRC via NEI letter dated August 26, 2016 (ADAMS accession number ML16286A297).

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fulfilling system functions. Opportunities include increasing defense-in-depth, reducing the risk significance of structures, systems and components, improving plant risk profiles, improving the time margin for key operator actions, and reducing outage risk. To achieve these outcomes, licensees invested additional time and resources in developing and implementing these strategies. The result was an enhancement of safety beyond the original regulatory requirements.

As currently proposed, Appendix A would determine the significance of a FLEX- related performance deficiency by including the increase in risk due to a reduction in the probability of success of: 1) the FLEX strategies to mitigate a beyond design basis external event, and 2) any strategy to mitigate an event for which the FLEX equipment could be used, as delineated in NEI 16-06. As a result, the proposed Appendix A SDP would more severely penalize licensees that have done the most to enhance the safety of the facility through the creative use of FLEX wherever practical than licensees that have not. We believe this ought to be reconsidered by the NRC.

We request that the NRC suspend plans to issue the revised Appendix A until this concern can be further evaluated and the unintended consequence of disincentivizing safety is addressed.

If you have any questions in this matter, please contact me or our lead staff member on the ROP, Jim Slider, at (202) 739-8015 or [jes@nei.org](mailto:jes@nei.org).

Sincerely,



Jennifer L. Uhle

c: Christopher G. Miller, D/DIRS, NRC  
Michael X. Franovich, D/DRA, NRC