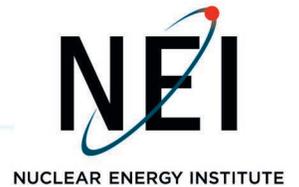


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November 16, 2022

Mr. Christopher G. Miller  
Director, Division of Reactor Oversight  
Office of Nuclear Reactor Regulation  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

**Subject:** NEI Comments on Significance Determination Process Timeliness

**Project Number: 689**

Dear Mr. Miller:

On behalf of its members, the Nuclear Energy Institute (NEI)<sup>1</sup> is pleased to provide comments in response to the Nuclear Regulatory Commission's (NRC) "Significance Determination Process Timeliness Review" presentation provided at the Reactor Oversight Process (ROP) public meeting on September 28 (ML22269A480). During the presentation, the NRC staff shared nine potential recommendations on how to address improving the off-colored significance determination process (SDP) Timeliness Metric E-3<sup>2</sup> that measures SDP completion time for potential greater-than-green (GTG) findings as part of the annual ROP self-assessment process. As part of this review, the NRC staff requested external stakeholder feedback. The NRC staff's potential recommendations are listed below followed by NEI comments that supplement the comments provided at the September 28 ROP public meeting documented in the meeting summary.<sup>3</sup>

**Overall Perspective:** NEI recognizes the importance of maintaining credibility and confidence in effective execution of the reactor oversight process. While timeliness plays a role, accuracy cannot be sacrificed when making the final determination of significance. We continue to encourage the NRC staff to ensure a technically and regulatorily sound conclusion is reached in the most reasonable time possible.

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<sup>1</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>2</sup> Inspection Manual Chapter (IMC) 0307, Appendix A, "Reactor Oversight Process Self-Assessment Metrics and Data Trending"

<sup>3</sup> NRC memorandum from Kenneth Kolaczyk to Philip J. McKenna dated October 20, 2022, "Summary of the ROP Bi-Monthly Public Meeting held on September 28, 2022." (ML22286A238)

The NRC identified contributing causes that have resulted in 11 of 17 potential GTG findings since 2018 that exceeded the established SDP timeliness metric. These include time to finalize the performance deficiency (PD), conduct investigations or address a first-of-a-kind issue (e.g., cyber); deterministic flowchart interpretation; and time to review licensee provided information. In some cases, the issues were unique or complex, and tools that were added as a result of previous ROP assessments were not employed or required to be used (i.e., use of the Inspection Finding Review Board). NEI's ROP Task Force performed a similar assessment of potential GTG findings during the same time period, and the findings are included in the NEI responses below. While in many cases the final determination resulted in the preliminary determination of GTG significance, there were at least 3 cases reviewed where the final determination did not result in a GTG finding based on licensee technical evaluations or other information provided by the licensee and reviewed by the NRC. These examples illustrate the importance of using all necessary information in determining final safety significance.

**NRC Recommendation #1, Pause the SDP metric clock for findings that are under investigation from NRC OI:** In this recommendation, the NRC benchmarked other regulatory metrics and concluded that stopping the clock would be consistent with other agency metrics related to ROP implementation.

**NEI Response:** We agree that there may be times when pausing the clock may be appropriate to better reflect additional complexity that is involved with the determination of significance. IMC-0609, Attachment 1<sup>4</sup>, lists a number of situations that would require a SERP, in addition to potential findings that are under investigation by NRC OI. We recommend considering all of these criteria that may warrant pausing the SDP metric clock.

**NRC Recommendation #2, Extend the SDP metric to 280 days by considering the OE 160-day congressional metric:** In this recommendation, the NRC is proposing using the 160-day goal for the enforcement action input into the metric that expands the overall SDP timeliness metric from 255 days to 280 days assuming 120 days for an exit after issue identification date.

**NEI Response:** We agree that ROP metrics should have a sound basis which supports achieving outcomes that are technically and regulatorily sound.

**NRC Recommendation #3, Require all cornerstones to implement Issue Finding Resolution Management (IFRM) Process:** In this recommendation, the NRC is proposing to require all cornerstones to implement the IFRM process (currently optional) based on 6 of the 11 findings exceeding the SDP timeliness metric, that were in the cornerstones of Emergency Preparedness, Public Radiation Safety, Occupational Radiation Safety, and Security.

**NEI Response:** We agree that the issues described above may have benefited from the use of the IFRM process utilizing an Issue Finding Review Board (IFRB). The IFRB was developed following previous ROP Self-

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<sup>4</sup> IMC-609, Attachment 1, "Significance and Enforcement Review Panel (SERP) Process"

Assessments to effectively manage the actions needed to reach a preliminary decision on the significance of inspection findings that do not initially screen to Green.<sup>5</sup> This process would also help improve communications between the NRC and licensees on product deliverables and key actions needed to support the determination of PDs and final significance determinations.

**NRC Recommendation #4, Enhance SERP form and IFRB form discussion on timeliness:** In this recommendation, the NRC is proposing to increase focus and discussion on various timeliness goals for determination of a PD, issuance of apparent violations, and final significance determination. The recommendation would also include discussion of the possible and most likely risks to the timeline.

**NEI Response:** We agree that increasing the understanding of actions needed to complete all phases of the process included in the SDP would help enhance NRC internal communications and communications between the NRC and licensees.

Since the forms already include determination of whether the timeliness metric is expected to be met or exceeded with a documented reason, the NRC staff should consider whether the SDP timeliness metric should only measure SDP completion timeliness for findings that were expected to meet the metric but did not. By including potential findings that are already known to exceed the timeliness metric, the value of the metric is reduced and may result in unintended outcomes.

**NRC Recommendation #5, Enhance SDP tracker to have a "timeliness challenged" category:** In this recommendation, the NRC is proposing enhancing internal non-public tracking tools to ensure timeliness goals are reviewed and "challenged" to meet established targets. For example, setting/keeping the 120-day PD goal and highlighting those findings that have exceeded it.

**NEI Response:** We agree that having additional touchpoints to track progress being made to properly characterize a PD or finalize the determination of significance may help to meet established milestones. This would also enhance both internal communications and communications between the NRC and licensee.

**NRC Recommendation #6, Reinforce guidance to indicate that preliminary GTG is an option to keep process moving:** In this recommendation, the NRC would consider using "preliminary GTG" language to help keep the timeline moving.

**NEI Response:** We do not agree that using the "preliminary GTG" language will improve SDP timeliness. Establishing additional process oversight and touchpoints, while ensuring timely communication both internally and between the NRC and licensee, will help information sharing to better support the established timeline.

**NRC Recommendation #7, Reinforce best available information to support the established SDP timeline:** In this recommendation, the NRC is proposing to reinforce guidance as described in IMC-0609<sup>6</sup> on the use of "best available information" recognizing that is not intended to restrict what information the

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<sup>5</sup> IMC-609, Attachment 5, "Inspection Finding Review Board"

<sup>6</sup> IMC-609, "Significance Determination Process"

licensee wants to provide, but to ensure that the information is made available in a way that supports the established SDP timeline.

**NEI Response:** We agree that it is important to ensure all relevant information is considered in the determination of final safety significance. In some cases, issues are not as complex, and require less information to make these determinations. In other cases, due to complexity of an issue including the characterization of the PD, additional information may be needed to fully understand the significance. There have been examples where information provided by the licensee was critical in the determination of the final safety significance.

**NRC Recommendation #8, Reinforce that a performance deficiency does not need be a root-cause level of analysis:** In this recommendation, the NRC is proposing to emphasize during training and other opportunities that a licensee PD is a proximate cause<sup>7</sup> of the degraded condition and does not need to be based on a rigorous root cause evaluation (which might take a licensee months to complete), but rather on a reasonable assessment and judgment of the staff.

**NEI Response:** We agree that determination of a PD should not require a root cause level of analysis. The characterization of the PD is a key element that influences the actions necessary to best define the assumptions needed to be evaluated against the risk models in determining final safety significance. Improving the timeliness between issue identification and issuance of the PD is a critical step that will help ensure actions that determine significance are properly considered.

We recommend that the NRC consider starting the SDP timeliness metric once the PD is issued. This would reduce the variability of the time it takes depending on how the issue was identified and assessed as a potential finding. This doesn't change how a licensee responds to an issue that has been identified and entered in the corrective action program but may reduce the amount of NRC staff and licensee resources devoted to evaluate significance based on early assumptions versus waiting for a PD to be developed and issued. In the examples reviewed, there were no immediate safety concerns as licensees took prompt compensatory actions or interim corrective actions as needed, while more detailed causal analyses were being evaluated. The NRC has regulatory tools including special inspections to ensure safety.

**NRC Recommendation #9, Update guidance documents to make the difference between metrics and interim goals clear as well as incorporate any of the above approved recommendations:** In this recommendation, the NRC identified guidance documents that should be changed to include metrics that have been made goals.

**NEI Response:** We agree that the guidance should be updated to reflect the changes.

We appreciate the opportunity to provide feedback on the NRC's assessment and potential recommendations to address SDP timeliness that has resulted in an off-colored ROP self-assessment metric. While it is not clear

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<sup>7</sup> IMC-0308, Attachment 3, "Technical Basis for Significance Determination Process"

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that there is an issue with SDP timeliness based on the examples reviewed and the final outcomes achieved, we believe that some of the recommendations and feedback provided should have a positive effect to help improve ROP efficiency.

Please contact me at [txr@nei.org](mailto:txr@nei.org) or 202-739-8137 if there are any questions on the content of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Riti", with a stylized flourish at the end.

Tim Riti

c: Mr. Russell Felts, NRC/DRO  
Mr. Philip McKenna, NRC/DRO  
Mr. David Aird, NRC/DRO  
NRC Document Control Desk