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Ms. Laura Dudes
Regional Administrator
Region II
U.S. Nuclear Regulatory Commission

Subject: Industry Feedback on Region II Fuel Cycle Facility Construction Oversight Workshop held August 15, 2023, and Suggested Topics for Additional Public Meetings in Fall 2023

Project Number: 689

Dear Ms. Dudes,

On behalf of the Nuclear Energy Institute's (NEI)¹ fuel cycle facility members, we provide the following feedback on the Construction Oversight Workshop held in the Region II offices on August 15, 2023. We appreciate the time and effort that NRC management and staff dedicated to conducting the workshop, and particularly your active engagement throughout the discussions. As we collectively agreed, additional discussions are warranted on key topics if the NRC continues to consider expanding its construction oversight process of fuel cycle facilities licensed under 10 CFR Part 70, currently or in the future. Therefore, we offer two general comments below and propose specific topics for future meetings that we anticipate will be held this Fall.

Two General Comments:

First, as you are aware, the fuel cycle fleet is small, yet diverse and six of the nine currently licensed facilities have been operating safely and securely for nearly 50 years. As we have stated previously in the context of comments on the NRC's budget formulation and execution, on the Smarter Program Initiatives and in prior discussions regarding the NRC's oversight program, the fuel cycle facilities represent a much lower risk profile than operating nuclear power plants and should continue to be regulated as such. It is unclear to the industry whether there is a new generic regulatory concern which is driving the NRC to potentially increase its role in overseeing the construction activities at currently operating or new fuel cycle

¹ 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.

facilities licensed under 10 CFR Part 70. The rule has not changed since 2000 and we are not aware of any safety concerns that would warrant a re-evaluation and modification of the current regulatory framework.

Secondly, based on discussions during the August workshop regarding the NRC's budget for this program, we believe additional dialogue is warranted for licensees and applicants to fully understand how they are currently funding this initiative and would be expected to fund it in Fiscal Years 2024-2025 (FY) and beyond. Specifically: 1) what are the total budgeted costs per year (FTE and contract dollars); 2) what portion of the costs would be recovered under billable hours versus annual fees each year; 3) whether this percentage will vary by year; and 4) when does the staff expect to "sunset" this initiative from a budget perspective. FY2023 ends September 30, 2023, yet industry has not been informed that they are already paying annual fees to support this program. As your bill payers, we seek more information.

Five Suggested Topics for Future Construction Oversight Meetings

The following topics were discussed during the August workshop but warrant continued dialogue if NRC proceeds with this initiative.

1. SCOPE OF CONSTRUCTION OVERSIGHT PROGRAM

The NRC's Construction Oversight inspection program scope should be limited to construction activities directly related to or in support of Items Relied on For Safety (IROFS). Identifying IROFS is the responsibility of the licensee or applicant as documented in the facility-specific Integrated Safety Analysis (ISA) required by 10 CFR Part 70 as promulgated in 2000. Existing licensees were required to: 1) submit their ISA methodologies for NRC review and acceptance; and 2) submit annual ISA Summary updates to the NRC for review. Since then, all applicants have followed the same rigorous licensing process. It is also important to note that designating IROFS routinely includes making risk-informed distinctions between the actual building and related building structures versus the systems and components housed in those same buildings.

2. DEFINE "MODIFICATIONS" vs. "CONSTRUCTION" vs. "AT-RISK CONSTRUCTION"

The NRC staff must clearly define these critical terms and how they would be applied at currently licensed facilities and at facilities proposed by applicants seeking authorization to operate under Part 70. For example, 10 CFR 70.72 currently allows licensees to make facility modifications and even construct "at risk" without NRC pre-approval. This industry practice allowed by regulation has been exercised for decades at currently operating facilities and the NRC makes informed decisions regarding whether and when to inspect such activities. The performance of the licensees has demonstrated compliance with this regulation as inspected by the NRC. Further, and equally important, is the fact that applicants seeking authorization to operate under 10 CFR Part 70 are subject to the same set of requirements as currently licensed facilities, represent the same risk profile, and should not be subject to different NRC

expectations simply because they are new or based on a conceptually different technology. Nuclear criticality safety is nuclear criticality safety regardless of the source. The same is true for other key safety and security program elements such as material control and accounting and radiation protection. Therefore, the regulatory basis for the NRC staff's imposition of new expectations as discussed in the context of draft revisions to Inspection Manual Chapter 2694 and related Inspection Procedures is not clear and the new expectations are not warranted.

3. CONSTRUCTION OVERSIGHT OF BUILDINGS

Based on the August 15, 2023, NRC public meeting, it is unclear whether--and on what regulatory basis and acceptance criteria--NRC intends to inspect or exercise construction oversight of buildings that are not designated as IROFS by the licensee. There is no regulatory basis for the NRC to inspect such buildings or related structures constructed in accordance with local building codes or other generally accepted building standards. At the very least this represents dual oversight and regulation as the local municipality and state operate as the permitting authority with inspection and certification scope of responsibility. This issue was a topic discussed in detail with the NRC staff in 2003 during the public NRC workshops held with licensees to clarify such topics. In fact, the October 15, 2003, Meeting Summary states, "The Director, Fuel Cycle Safety and Safeguards agreed that, for consequences typically encountered at the existing Category 1 and 3 uranium processing facilities, it is usually appropriate to use Standard or Uniform Building Codes, as applicable, to establish a threshold for highly unlikely initiating event frequency." The NRC staff has not provided any regulatory basis for expanding this expectation to other categories of licensees nor to applicants for new licenses or license amendments for existing facilities. There is no additional risk identified to justify such a position.

4. NRC FINDINGS DURING CONSTRUCTION

The industry seeks clarification on whether, how and when the NRC will track "findings" identified by NRC inspectors during various phases of construction. Further, how are such findings characterized and their significance determined during construction when the applicable requirement or license commitment is not yet in effect? When would the NRC close out the finding and how, when and at what frequency would this information be made available to licensees or applicants? Timely and transparent communication of such issues including a clear regulatory basis for such "findings" (which formally may not exist) is key to avoiding potential confusion and helping to ensure that our mutual resources are expended on the most safety significant issues.

5. BUDGET-RELATED ISSUES

The NRC should clearly describe how this program is currently budgeted for FY 2023-24 and proposed in the FY2025 Congressional Budget Justification for the Fuel Cycle Business Line. Specifically, what portion does the NRC expect to recover from annual fees (Part 171) versus billable hour fees (Part 170) in these

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fiscal years and what are the NRC work products expected? Clearly, the NRC is expending Part 171 fees now to develop the program discussed during the August 2023 public meeting. We are concerned that an inordinate amount of funding has been allocated and is being expended to “build” out an expanded and modified NRC inspection and oversight program that, from a risk-informed and operational experience perspective, cannot be justified. To that end, regulatory compliance is industry’s highest priority. In addition, licensees make informed business decisions based on the market, cost-benefit analyses, and other factors. An input to that decision process is estimated NRC inspection costs based on such questions as: 1) what is the order of magnitude level of inspection hours that the NRC has assumed for this initiative; 2) what is the basis for and where would the estimated number of hours be documented, e.g., Inspection Manual Chapter 2694; and 3) would the inspection topic areas be determined by the IROFS involved as well as the phase and complexity of the construction project? Finally, the industry believes that the NRC has at its current disposal adequate tools in the inspection program toolbox to address construction activities—of any order of magnitude—without developing new and relatively resource intensive tools such as the risk methodology screening tool discussed in the recent public meeting.

In addition, the NRC staff discussed the possibility that some new construction projects might warrant the assignment of NRC Resident Inspectors during some phases of construction and possibly for the operating period. The NRC should identify what criteria will be used to make this decision, when the decision would be made and when an applicant would be informed of the decision as such costs could be considerable and must be absorbed and funded by the applicant.

Thank you for your time, attention, and full consideration of our input on this important matter. We look forward to your feedback and further discussions should NRC decide to proceed.

Sincerely,



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