



NUCLEAR ENERGY INSTITUTE

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U.S. Nuclear Regulatory Commission
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SUBJECT: Development of Guidelines for Voluntary Industry Initiatives and Notice of Public Meeting With the Nuclear Energy Institute (NEI) and Members of the Public (64 *Fed. Reg.* 69574, December 13, 1999)

PROJECT NUMBER: 689

Dear Dr. ~~Sheron~~ *Brian*,

The Nuclear Energy Institute¹ has offered comments and participated in meetings to discuss the use of voluntary initiatives by the nuclear industry. We participated in two stakeholder meetings, September 1998 and October 1999, and the public meeting held December 21, 1999. These comments, along with the discussion transcribed at these meetings, provide a comprehensive set of comments and concerns related to the NRC desire to use voluntary industry initiatives in the regulatory context.

NEI and other industry organizations have developed programs and issued guidelines that represent an effective and efficient way of addressing operational and technical matters. In some cases these documents address regulatory issues. These programs and guidelines are intended for voluntary use. They may be used by a number of nuclear utilities but not all unless a formal industry position (industry initiative) is taken. The approval and implementation of such a position

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including regulatory aspects of generic operational and technical issues. NEI members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.



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results in an agreement among nuclear utilities to take specific action(s). The Enclosure contains a listing of initiatives and guidelines demonstrating this point. Individual utilities may choose to commit to implement industry-developed guidance in response to regulations, orders and license conditions relating to specific technical or regulatory issues, or take such other action that they deem appropriate. The management of such commitments is discussed in NEI 99-04, *Guidelines for Managing NRC Commitment Changes*.

In the stakeholder discussions held to-date, NRC suggested voluntary industry initiatives could be used as an alternative to NRC imposing new regulatory requirements by issuing a generic letter. To suggest that industry pursue a voluntary initiative in such a case is counterproductive and circumvents the provisions of the backfitting rule. We believe that if NRC has determined that regulatory action is warranted, then NRC should proceed with rulemaking.

Similarly, generic communications should not be used to impose new requirements as an alternative approach to the disciplined rulemaking process. We refer you to the May 3, 1999, NEI letter offering comments to the generic communication process. A number of its key points also apply to NRC use of voluntary industry initiatives:

- there should be early and frequent interaction to discuss emergent technical and regulatory issues
- the compliance exception of the backfitting rule should be used when there is a failure to meet an explicit regulatory requirement
- the provisions of 10 CFR 50.54(f) as a basis for requesting information should be used when regulatory action is contemplated that may affect the status of an operating license

These are fundamental to achieving the necessary understanding of the technical merits of an issue of interest to the NRC, as well as the regulatory scope and impact.

During our discussions, questions were identified regarding inspection and enforcement of voluntary industry initiatives, and the appropriateness of taking such actions in the absence of regulatory requirements. We believe there are two ways in which initiatives fall within NRC's purview:

- when implementation guidance associated with a voluntary industry initiative is endorsed by NRC in a regulatory guide as one way of meeting an explicit provision of a regulation, or
- when the implementation guidance affects programs and processes within the framework of current regulations, typically through a docketed commitment.

Industry guidelines are not written for the NRC to use as a basis for inspection. Furthermore, enforcement action should be based upon explicit regulatory

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requirements and a determination of safety significance. NRC inspection and enforcement of voluntary industry initiatives and commitments to associated guidance need to be carefully considered and thoroughly understood during the interactions between industry and NRC on a specific issue. NRC expectations for inspection and enforcement essentially result in the voluntary initiative no longer being voluntary.

In conclusion, we believe voluntary industry initiatives should not be a substitute for regulatory action. The NRC must maintain its standing as an objective regulatory agency for it to be credible as well as to satisfy its legal responsibilities. Deferring to industry, or creating the perception of doing so under the auspices of a voluntary industry initiative, could quickly erode public confidence and trust. The NRC has the authority and responsibility under the Atomic Energy Act to promulgate new or revised requirements necessary to ensure adequate protection of public health and safety. Any new or revised requirements must meet the criteria of 10 CFR 50.109, Backfitting. Voluntary industry initiatives should not be used by the NRC to impose new regulatory requirements, or as an alternative to the disciplined process that the NRC must follow, including complying with the backfitting rule.

We received the February 9 letter transmitting NRC thoughts on a process chart for voluntary initiatives and intend to submit comments by March 17.

Please contact me if you have any questions or wish to discuss these comments in further detail.

Sincerely,



Alexander Marion

Enclosure

cc: Mr. Samuel J. Collins
Mr. Jack R. Strosnider, Jr.

Historical Perspectives on Industry Guidelines and Initiatives

1. Industry initiatives and guidelines that have subsequently been endorsed by the NRC in regulatory guides as an acceptable means, in whole or in part, of meeting a new or existing regulation.
 - a. **Initiatives**
 - Station Blackout (NUMARC 87-00)
 - Dedication of Commercial Grade Items
 - Access Authorization (NUMARC 89-01)
 - b. **Guidelines**
 - Monitoring the Effectiveness of Maintenance (NUMARC 93-01)
 - Vehicle Barrier Systems (NEI 96-01)
 - Containment Testing (App. J, Option B) (NEI 94-01)
 - FSAR Updated (NEI 98-03)
2. Industry initiatives and guidelines that have been endorsed by the NRC as providing an acceptable means of addressing an NRC issue or concern.
 - a. **Initiatives**
 - Station Blackout (Diesel Reliability portion)
 - Motor Operated valves
 - Piping Erosion/Corrosion
 - Substandard Circuit Breakers
 - Comprehensive Procurement Initiative (NUMARC 90-13)
 - b. **Guidelines**
 - Oil Loss in Rosemount Transmitters (NUMARC 91-02)
 - Substandard Non-Safety-Related Molded Case Circuit Breakers (NUMARC 90-14)
 - Design Basis Programs (NUMARC 90-12)
 - Fraudulent Flanges (NUMARC 88-01)
 - Managing NRC Commitments (NEI-95-07)
3. Industry initiatives and guidelines that have not been endorsed by the NRC but have been recognized by the NRC as providing an acceptable means of addressing an NRC issue or concern.
 - a. **Initiatives**
 - Shutdown Issues (NUMARC 91-06)
 - Severe Accident Management
 - b. **Guidelines**
 - NSAC-125

4. Industry initiatives and guidelines that were taken to address industry, non-regulatory issues.

a. Initiatives

- Industry Consensus
- Shortage of Qualified personnel
- Fitness for Duty Data Collection
- Reducing Automatic trips
- Radiation Exposure Control

b. Guidelines

- Personnel Access Data System (NEI-95-06)