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NUCLEAR ENERGY INSTITUTE

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

Mr. Scott Moore
Acting Director, Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Comments on Regulatory Issue Summary 2016-11, "Requests to Dispose of Very Low-Level Radioactive Waste Pursuant to 10 CFR 20.2002"

Dear Mr. Nieh and Mr. Moore:

The Nuclear Energy Institute (NEI)[1] writes to express our concerns with Regulatory Issue Summary (RIS) 2016-11, "Requests to Dispose of Very Low-Level Radioactive Waste Pursuant to 10 CFR 20.2002" (Nov. 13, 2016), and the recent U.S. Nuclear Regulatory Commission (NRC) staff action to give RIS 2016-11 the force and effect of law in the agency's enforcement process. Reversing decades of agency guidance and practice, RIS 2016-11 (at page 2) declared that "any licensee's request for approval to dispose of licensed material under 10 CFR 20.2002, or the equivalent Agreement State regulations, must be submitted to the regulatory authority that issued the license for use of the radioactive material." Prior to this change in policy, the NRC had long held that the licensing and regulatory authority over the *disposal* of low-level waste (LLW) generated by a reactor facility located within an Agreement State resided with the Agreement State in which the waste was generated (although the NRC maintained authority over the *handling* and *storage* of LLW at all reactor facilities).[2]

Without acknowledging the well-reasoned legal underpinnings of the NRC's prior interpretation of section 274 of the Atomic Energy Act of 1954, as amended (AEA) and 10 CFR § 150.15, RIS 2016-11 and subsequent enforcement actions simply reverse course. To remedy these clear violations of the AEA, the Administrative Procedure Act (APA), and Commission regulations, NEI requests that the NRC, in accordance with 10 CFR § 2.804(f), treat this letter as a post-promulgation comment on the agency's new interpretation, and publish a statement in the *Federal Register* rescinding RIS 2016-11 and reinstating the NRC's prior longstanding position in IN 86-90 and the referenced OELD Opinion.

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[1] NEI is responsible for establishing unified policy 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.

[2] *See* Office of Executive Legal Director (OELD) Opinion, Jurisdiction Over Low Level Waste Management at Reactor Sites in Agreement States (Sept. 13, 1985) (ML103430218); Information Notice (IN) No. 86-90, Requests to Dispose of Very Low-Level Radioactive Waste Pursuant to 10 CFR 20.302 (Nov. 3, 1986) (ML031250358).

A. The AEA and NRC Regulations Allow Agreement States to Assume Jurisdiction Over the Disposal of LLW Generated at Reactor Facilities.

Section 274 of the AEA authorizes the NRC to transfer regulatory and licensing authority over specific categories of nuclear materials within a state to the state government.[3] Under that provision, Congress allows the NRC to "enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the [NRC]" and the assumption of the authority by the state.[4] Before doing so, the NRC must find that the regulatory regime of the proposed "Agreement State" is "compatible with the [NRC's] program" and that the state's program is "adequate to protect the public health and safety."[5]

In accordance with section 274, many Agreement States have been transferred regulatory and licensing authority over LLW disposal, including states with reactor and fuel-cycle facilities. Section 274(c), however, provides that such agreements for NRC discontinuance of authority may not cover the regulation of waste disposal falling under two enumerated categories: (i) "disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;" and (ii) "disposal of such other byproduct, source, or special nuclear material as the Commission determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission."[6]

The clear implication of this language is that Agreement States can assume regulatory authority over LLW disposal that does *not* fall within either of these two categories. Importantly, the issues addressed in RIS 2016-11 do not involve either the disposal of nuclear materials (i) in the ocean or sea, or (ii) that the Commission has determined "by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission." To the contrary, the Commission allows Agreement States to regulate LLW disposal. In particular, using 10 CFR § 20.2002 or compatible Agreement State processes, the Commission has long allowed the disposal of so-called "Very LLW" in Resource Conservation and Recovery Act (RCRA) permitted facilities that are neither licensed by the NRC nor Agreement State programs.[7]

Nothing in section 274 directs the NRC to treat the disposal of LLW from reactor facilities (or any other production or utilization facility) any differently than LLW from other sources. Section 274(c) does provide that agreements for NRC discontinuance of authority may not cover the regulation of "the

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[3] 42 U.S.C. § 2021.

[4] 42 U.S.C. § 2021(b).

[5] 42 U.S.C. § 2021(d)(2).

[6] 42 U.S.C. § 2021(c)(3), (4).

[7] "Very LLW" refers to waste that contains residual radioactivity falling well below the Class A LLW limits found in 10 CFR Part 61. Very LLW can be safely disposed in landfill facilities that are regulated under RCRA.

construction and operation of any production or utilization facility or any uranium enrichment facility."[8] But notably, Congress included only the *construction* and *operation* of production and utilization facilities—not the *disposal* of waste from production and utilization facilities within this prohibition. Congress made this choice even though—and likely because—it imposed different, risk-based limitations on the discontinuance of authority over disposal of nuclear material in other subparagraphs in section 274(c).

Had Congress intended to impose a blanket limitation on the ability of Agreement States to regulate the disposal of wastes from production and utilization facilities it could have done so. Instead, Congress provided the Commission with the authority—by regulation or order—to determine which wastes presented sufficient hazards such that only the Commission could remain the regulatory and licensing authority. But the Commission has neither by regulation nor by order determined that it must retain authority over LLW generated by production and utilization facilities. To the contrary, LLW from production and utilization facilities is regularly disposed of in Agreement State facilities and, in the case of Very LLW, RCRA-permitted facilities.

The NRC's regulations implementing and interpreting section 274(c) in 10 CFR Part 150 further demonstrate the jurisdictional lines over LLW. Restating the requirement of section 274(c), 10 CFR § 150.15(a)(1) provides that persons in Agreement States "are not exempt from the Commission's licensing and regulatory requirements with respect to . . . [t]he construction and operation of any production or utilization facility." That regulation further provides that "operation of a facility," as that term is used in that subparagraph, "includes, but is not limited to (i) the *storage* and *handling* of radioactive wastes *at the facility site* by the person licensed to operate the facility, and (ii) the discharge of radioactive effluents from the facility site."[9] Had the Commission intended to retain jurisdiction over the *disposal* of LLW generated at a production or utilization facility site, it would have said so.

The Statement of Considerations for Part 150 conclusively demonstrates that the Commission deliberatively omitted disposal of LLW generated at a reactor facility site from 10 CFR § 150.15(a)(1). After receiving comments from "some fifty organizations and individuals," the Atomic Energy Commission (AEC) explained that many "comments received were concerned in the main with the question of whether the Commission should continue control in agreement States of the commercial land burial of byproduct, source, or special nuclear wastes . . . ." [10] After considering the various comments, the Commission "decided against blanket reservations of control over land burial of waste . . . ."[11] It further explained: "Control over the *handling and storage* of waste at the site of a reactor, including

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[8] 42 U.S.C. § 2021(c)(1).

[9] 10 CFR § 150.15(a)(1) (emphasis added).

[10] Atomic Energy Commission, Part 150—Exemptions and Continued Regulatory Authority in Agreement States Under Section 274, 27 Fed. Reg. 1351, 1351 (Feb. 14, 1962).

[11] *Id.*

effluent discharge, will be retained by the Commission as a part of the control of reactor operation. *The states will have control over land burial of low level wastes*."[12] Thus, the Commission clearly and intentionally distinguished between the "storage and handling" of LLW (authority over which the NRC must always maintain), and the disposal of LLW (authority over which may be transferred to Agreement States).

B. NRC's Longstanding Position Is That an Agreement State Has Authority over the Disposal of LLW Generated by a Reactor Facility within the Agreement State.

For decades, the NRC affirmed the AEC's interpretation of section 274 and 10 CFR § 150.15 discussed in the previous section that the Agreement State—not the Commission—was the proper authority to review and approve the disposal of Very LLW generated by a reactor facility under the state's equivalent of 10 CFR 20.2002. The NRC's Office of Executive Legal Director (OELD) specifically addressed NRC versus Agreement State jurisdiction over LLW at reactor sites in a memorandum entitled, "Jurisdiction over Low Level Waste Management at Reactor Sites in Agreement States" (Sept. 13, 1985). The OELD Opinion looked to the plain language and structure of section 274 and 10 CFR § 150.15 to draw a distinction between the need for the NRC to maintain authority to license and regulate the *handling* and *storage* of LLW *at the reactor facility site*, and the ability of the Agreement States to maintain authority to license and regulate the *disposal* of LLW *outside the reactor facility site*. After concluding that in Agreement States, the NRC continues to maintain authority to license and regulate the handling and storage of low-level waste in the exclusion area (*i.e.*, part of the reactor facility site), the OELD Opinion explained:

> The conclusion differs, however, regarding the disposal of low level radioactive waste generated by the operation of the nuclear reactor. The omission of low level waste disposal in 10 CFR 150.15 as a function reserved to the Federal Government implies that it has been relinquished to the Agreement States. The Statement of Considerations accompanying Part 150 when it was promulgated clearly demonstrates that the Atomic Energy Commission considered the question of Agreement State authority over the disposal of reactor low level waste and decided to relinquish the function, while retaining handling and storage.[13]

The OELD Opinion supported this conclusion by quoting the Part 150 Statement of Considerations, which declared that: (1) "[t]he Commission has decided against blanket reservations of control over land burial of waste . . ."; (2) "[c]ontrol over the handling and storage of waste at the site of a reactor,

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12 *Id.* (emphasis added).

13 OELD Opinion at 2.

including effluent discharge, will be retained by the Commission as a part of the control of reactor operation"; and (3) "*[t]he states will have control over land burial of low level wastes*."[14]

Importantly, the OELD Opinion went on to note that because the AEA requires that the agency identify, by regulation or order, the regulatory authority over which, if any, forms of LLW disposal cannot be transferred to Agreement States, "the NRC is not at liberty to vary the clear meaning given to this regulation by the Atomic Energy Commission without a rulemaking proceeding, or by issuance of appropriate orders, pursuant to Section 274c. of the Atomic Energy Act, as amended."[15]

This conclusion was incorporated into Generic Letter 85-14, Commercial Storage at Power Reactor Sites of Low-level Radioactive Waste Not Generated by the Utility (Aug. 1, 1985), which states: "[I]nterim storage of LLW within the exclusion area of a reactor site, as defined in 10 CFR 100.3(a), will be subject to NRC jurisdiction regardless of whether or not the reactor is located in an Agreement State, pursuant to the regulatory policy expressed in 10 CFR 150.15(a)(l). *Within Agreement States, for locations outside the exclusion areas, the licensing authority is in the Agreement State*."[16]

The OELD interpretation of section 274 and 10 CFR § 150.15 was also incorporated into Information Notice (IN) No. 86-90, Requests to Dispose of Very Low-Level Radioactive Waste Pursuant to 10 CFR 20.302 (Nov. 3, 1986). IN 86-90 states:

> This notice is to inform nuclear reactor licensees of the authority of Agreement States in reviewing and approving disposals of waste that in the past might have been reviewed by the NRC pursuant to 10 CFR § 20.302(a). In those cases where the reactor facility was in an Agreement State, the NRC did not have a legal basis for performing the reviews and granting approvals.[17]

IN 86-90 further states that 10 CFR § 20.302(a) (which has since been re-designated as 10 CFR § 20.2002(a)) does not address "NRC versus Agreement State jurisdiction," but that "in a recent legal opinion regarding regulatory jurisdiction, the NRC's Executive Legal Director made it clear that in Agreement States NRC approval is not necessary for within or outside of the exclusion area of low-level waste from a reactor facility. Such approval is within the jurisdiction of the Agreement State. For

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14 *Id.* (quoting 27 Fed. Reg. at 1351) (emphasis added by OELD Opinion).

15 *Id.*

16 Generic Letter 85-14, Commercial Storage at Power Reactor Sites of Low-level Radioactive Waste Not Generated by the Utility (Aug. 1, 1985) (ML031150709) (emphasis added). The OELD Opinion was itself also included in NUREG/CR-5569, Rev. 1, Health Physics Positions (HPPOS) Data Base at 173 (Feb. 1994) (ML093220108) as HPPOS-097 PDR-9111210206.

17 IN 86-90 at 1.

disposal of very low-level radioactive waste in States that are not Agreement States, only NRC approval is required."[18]

C. The NRC's Change in Position in RIS 2016-11 Violates the AEA, APA, and NRC Regulations.

For decades, licensees relied on the position set forth in IN 86-90, Generic Letter 85-14, and the OELD Opinion. Despite the longstanding, well-reasoned interpretation of section 274, 10 CFR § 150.15, and 10 CFR § 20.2002, the NRC issued RIS 2016-11 on November 13, 2016 without first soliciting input from industry, the Agreement States, or any other stakeholders. RIS 2016-11 simply declared that:

> IN 1986-90 incorrectly stated that in cases where a nuclear reactor facility is located in an Agreement State, the NRC does not have the legal basis for performing the reviews and granting approvals. The NRC performed a regulatory review of the 10 CFR 20.2002 process and determined that IN 1986-90 did not provide the correct information regarding regulatory approval to dispose of very low-level waste.[19]

According to RIS 2016-11, the NRC was making a "clarification that any licensee's request for approval to dispose of licensed material under 10 CFR 20.2002, or the equivalent Agreement State regulations, must be submitted to the regulatory authority that issued the license for use of the radioactive material."[20] In the case of licensees for production and utilization facilities, therefore, the request would now need to be made to the NRC. But RIS 2016-11 provided no discussion of the jurisdictional issues discussed in the OELD Opinion and offered no alternative interpretations of section 274 and 10 CFR § 150.15. It did not, for example, point to any "regulation or order" in which the Commission determined that it—not the Agreement States—must retain licensing and regulatory authority over the disposal of low-level waste as required by section 274 and Part 150. As discussed below, RIS 2016-11 and its subsequent invocation in enforcement actions violate the AEA, APA, and NRC regulations.

1. RIS 2016-11 relies on an interpretation not in accordance with Section 274 and Part 150.

The OELD Opinion and IN 86-90 conclusions that the NRC has no authority over the disposal of LLW from a reactor facility located in an Agreement State was based on the plain language and structure of

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[18] *Id.*

[19] RIS 2016-11 at 1. It is unclear which "regulatory review" is referenced here, but in 2012, the NRC issued "Clarification of the Authorization for Alternate Disposal of Material Issued Under 10 CFR 20.2002 and Exemption Provisions in 10 CFR (FSME-12-025)" (Mar. 13, 2012) (ML12065A038). While this letter to Agreement States suggests that "both the NRC and the Agreement State would need to become involved" when "[a]n NRC licensee requests authorization under 20.2002 to dispose of material at an unlicensed facility in an Agreement State," it never explains why 10 CFR § 20.2002 is universally applicable in such scenarios. *Id.* at 2.

[20] RIS 2016-11 at 2.

section 274(c), and subsequent determinations in the Part 150 rulemaking. Section 274(c)(4) grants the NRC the ability to withhold from Agreement States the authority over any nuclear material the Commission has determined "by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission." In the Part 150 rulemaking, the Commission "decided against blanket reservations of control over land burial of waste . . . ." and instead determined that Agreement States will have authority over the disposal by land burial of LLW.[21]

And while section 274(c)(1) precludes the transfer to Agreement States of authority over the "construction and operation" of reactor facilities, "disposal" of waste—whether from reactor facilities or otherwise—is dealt with in other subparagraphs in section 274(c). Because disposal is clearly addressed in other subparagraphs in section 274(c)—and not in section 274(c)(1)—the clear conclusion to be drawn is that section 274(c)(1) does not preclude the transfer to Agreement States of authority over the disposal of LLW waste from reactor facilities. For this reason, 10 CFR § 150.15 necessarily draws a distinction between the need for the NRC to maintain authority to license and regulate the *handling* and *storage* of LLW *at the reactor facility site*, and the ability of the Agreement States to maintain authority to license and regulate the *disposal* of LLW *outside the reactor facility site*. By taking the opposite view in RIS 2016-11—and doing so without conducting a notice and comment rulemaking—the NRC abused its discretion and took action not in accordance with section 274 and 10 CFR § 150.15.[22]

2. RIS 2016-11 contains no reasoned explanation for the NRC's new interpretation.

"The APA's requirement of reasoned decision-making ordinarily demands that an agency acknowledge and explain the reasons for a changed interpretation."[23] "An agency may not, for example, depart from a prior policy *sub silentio* or simply disregard rules that are still on the books."[24] When switching interpretations, an agency must always "show that there are good reasons for the new policy."[25] And in certain circumstances—like those here—more is required. The Supreme Court has held that "the APA requires an agency to provide more substantial justification when 'its new policy rests upon factual findings that contradict those which underlay its prior policy; or when its prior policy has engendered serious reliance interests that must be taken into account.'"[26] "[I]t is not that further justification is demanded by the mere fact of policy change[,] but that a reasoned explanation is needed for

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21 27 Fed. Reg. at 1351

22 As the OELD Opinion recognized, section 274(c)(4) allows the NRC to "determine by regulation or order" that authority over certain nuclear material should not transferred to an Agreement State because of its "hazards or potential hazards." The NRC has made no such determination with regard to LLW by regulation or order.

23 *Verizon Communications Inc. v. FCC*, 740 F.3d 623, 636 (D.C. Cir. 2014).

24 *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

25 *Id.*

26 *Perez v. Mortgage Bankers Ass'n*, 135 S. Ct. 1199, 1209 (2015).

disregarding facts and circumstances that underlay or were engendered by the prior policy."[27] Put another way, "[i]t would be arbitrary and capricious to ignore such matters."[28]

RIS 2016-11 fails to satisfy the basic requirements of reasoned decision-making demanded of an agency when changing an interpretation. Other than a conclusory statement that "IN 1986-90 incorrectly stated that in cases where a nuclear reactor facility is located in an Agreement State, the NRC does not have the legal basis for performing the reviews and granting approvals," RIS 2016-11 fails to identify any reason—let alone a good reason—to alter the prior policy. Nor does RIS 2016-11 meet the heightened standard involved here given the longstanding industry reliance on IN 86-90 (as well as Generic Letter 85-14 and HPPOS-097 PDR-9111210206). Indeed, RIS 2016-11 makes no mention of the OELD Opinion referenced in IN 86-90. Nor does it provide any analysis of the plain language and structure of section 274 and 10 CFR § 150.15, or the regulatory history of Part 150 even though they all provide the underpinning for the position established in IN 86-90. Accordingly, the NRC's issuance of RIS 2016-11 was arbitrary and capricious and violates the APA.

Not only was this departure from NRC's longstanding position insufficiently explained, it is unclear why such a change would be needed because the NRC has ample tools to evaluate Agreement State regulation of LLW. Under the Integrated Materials Performance Evaluation Program (IMPEP), the NRC already provides comprehensive oversight of Agreement State programs, including LLW disposal programs. IMPEP reviews ensure that public health and safety are adequately protected from the potential hazards associated with the use of radioactive materials and that Agreement State programs are compatible with NRC's program. To be sure, there has been no suggestion that the approval of the disposal of Very LLW pursuant to Agreement State equivalents of 10 CFR § 20.2002 has somehow created a radiological safety issue. Nor has there been any suggestion of incompatibility with the NRC's program. But if there were such concerns, the IMPEP is the proper tool to identify and remedy any such findings. Accordingly, there is no need for NRC-licensed facilities within Agreement States to seek an exemption from NRC to dispose of LLW in a non-Part 61 LLW disposal facility or for the NRC to review 10 CFR § 20.2002 requests for the offsite disposal of Very LLW generated by such licensees.

3. The NRC violated its own procedures and regulations when it promulgated RIS 2016-11.

Equally problematic is the NRC's failure to follow its own processes and regulations when issuing RIS 2016-11. Under 10 CFR § 2.804(e)(2), the NRC "shall provide for a 30-day post-promulgation comment period for . . . [a]ny interpretative rule." In accordance with 10 CFR § 2.804(f), "[f]or any post-promulgation comments received under paragraph (e) of this section, the Commission shall publish a statement in the *Federal Register* containing an evaluation of the significant comments and any revisions of the rule or policy statement made as a result of the comments and their evaluation."

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[27] *Fox*, 556 U.S. at 515-16.

[28] *Id.* at 515.

Although not defined in the APA, the Supreme Court has held that "the critical feature of interpretive rules is that they are 'issued by an agency to advise the public of the agency's construction of the statutes and rules which it administers.'"[29] On its face, RIS 2016-11 is an interpretative rule as it advises the public of the NRC's construction of 10 CFR § 20.2002 and, by RIS 2016-11's repudiation of IN 86-90 (and the referenced OELD Opinion), 10 CFR § 150.15 and section 274 as well.

Despite the agency's own requirements for interpretative rules, the NRC has still yet to provide the public with a post-promulgation comment period for RIS 2016-11. The NRC should thus treat this letter as a post-promulgation comment and should publish a statement in the *Federal Register* rescinding RIS 2016-11 and reinstating the longstanding position in IN 86-90 (and the referenced OELD Opinion).

4. RIS 2016-11 contains a seriously flawed backfit analysis.

RIS 2016-11 concedes that "the staff did not perform a backfit analysis" ostensibly because "[a]ny action that licensees take to implement changes or procedures in accordance with the information contained in this RIS ensures compliance with current regulations, is strictly voluntary, and, therefore, is not a backfit."[30] That conclusion ignores the fact that in reliance on the NRC's longstanding position, licensees have developed procedures, entered into contracts, and obtained approvals from Agreement States for the disposal of low-level waste in accordance with Agreement State regulations (including Agreement State regulations equivalent to 10 CFR § 20.2002).

Notwithstanding the incorrect disclaimer in RIS 2016-11 that licensees are required to take "no action"[31] because it purportedly provides a mere "clarification," the NRC has relied on RIS 2016-11 as the basis for enforcement action under the theory that "an Agreement State does not have the authority to grant permission to a nuclear plant licensee for proposed procedures to dispose of low-level waste."[32] The NRC made this determination despite the fact that the Agreement State had granted the licensee an authorization for the disposal of certain low-level waste streams in accordance with the state's equivalent to 10 CFR 20.2002. Thus, the basis for the NRC's summary dismissal of its obligation to perform a backfitting analysis is incorrect. That is, the changed interpretation provided in the RIS *requires* licensees that have obtained approval from an Agreement State for alternative disposal of LLW to obtain approval from the NRC prior to continuing such disposals or risk enforcement action.

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29 *Mortgage Bankers*, 135 S. Ct. at 1204 (quoting *Shalala v. Guernsey Memorial Hospital*, 514 U.S. 87, 99 (1995)).

30 RIS 2016-11 at 3.

31 *Id.*

32 EA-18-137, South Texas Project, Units 1 & 2 - Response to the August 14, 2018, Letter on the Disposal of Very Low-Level Radioactive Material and Exercise of Enforcement Discretion (EPID L-2018-LRO-0032) at 1 (Oct. 31, 2018) (ML18260A250).

5. The NRC is improperly relying on RIS 2016-11 to justify enforcement actions.

As noted in the previous section, the NRC has explicitly relied on RIS 2016-11 as the basis for enforcement action. Such agency action is troubling because interpretive rules (such as RIS 2016-11) "do not have the force and effect of law and are not accorded that weight in the adjudicatory process."[33] Nonetheless, the enforcement action cited appears to entirely rely on RIS 2016-11 as the basis for the NRC's decision and further notes that because the *licensee* has "raised issues associated with the RIS and with prior guidance," the NRC is powerless to take action in this particular adjudication until the issue is addressed "generically to provide further clarity."[34] But the problem here is not of the licensee's making; it is that of the NRC's based on the agency's unreasonable decision to treat RIS 2016-11 as a binding substantive requirement.

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In summary, NEI requests that the NRC, in accordance with 10 CFR § 2.804(f), treat this letter as a post-promulgation comment on the agency's new interpretation in RIS 2016-11, and publish a statement in the *Federal Register* rescinding RIS 2016-11 and reinstating the NRC's prior position in IN 86-90 and the referenced OELD Opinion. Thank you for your consideration of NEI's comments on behalf of the industry. If the NRC staff has questions or would like to discuss these or other issues, please do not hesitate to contact me (ecg@nei.org; 202.739.8140) or Jonathan Rund (jmr@nei.org; 202.739.8144).

Very truly yours,

Ellen C. Ginsberg

c: Ms. Mary Spencer, OGC/AGG/RMR
Mr. Bo Pham, NMSS/DUWP
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Mr. Micheal Franovich, NRR/DRA

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33 *Guernsey*, 514 U.S. at 99.

34 EA-18-137 at 2.