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NEI

NUCLEAR ENERGY INSTITUTE

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Rules and Directives Branch
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555

SUBJECT: Issuance and Availability of Draft Regulatory Guide DG-1097, *Fire Protection for Operating Nuclear Power Plants, (Fed. Reg. 38866)* **Request for Comments**

PROJECT NUMBER: 689

The Nuclear Energy Institute,[1] offers the following comments relative to the *Federal Register* notice that solicited public comments on draft Regulatory Guide DG-1097, *Fire Protection for Operating Nuclear Power Plants.* We appreciate the opportunity to comment on this draft regulatory guide.

The industry has consistently supported the development of this regulatory guide, based on the original objective of the effort, which was to compile and succinctly document previously established NRC staff positions on acceptable approaches to implementing fire protection requirements. This regulatory guide could provide a key element in assuring a more uniform and consistent understanding of the myriad licensing positions that evolved following the promulgation of 10 CFR 50.48 and 10 CFR 50, Appendix R. While significant progress has occurred, much effort remains if it is to fulfill that promise.

The industry was given the opportunity to comment on an earlier version of DG-1097 (DG-1094), and NEI submitted comments in a letter to Mr. John Hannon, Chief, Plant Systems Branch, on January 7, 2000. The majority of these earlier comments have not been addressed in the subsequent revision published as DG-1097.

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[1] NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's 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, nuclear materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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Our concerns are three-fold:

- Sections of the text in DG-1094 were identified by the industry as "new guidance," which could be inappropriately interpreted by NRC inspectors and licensees to be new NRC staff positions.

- No acknowledgement or explanation was provided for rejecting numerous industry comments with specific recommendations that fell outside the "new guidance" category.

- The implementation of a regulatory guide that includes "best practices" has not been the subject of a formal regulatory analysis.

Significant industry resources were spent reviewing DG-1094 in depth and in preparing well-considered comments. The apparent lack of NRC staff consideration of the majority of our earlier comments is disappointing. This is a particular concern in a regulatory environment in which NRC is increasingly soliciting industry contributions to resolving technical and process issues as outlined in SECY 00-0016, *Industry Initiatives in the Regulatory Process.* Although this activity is not an industry initiative, it is one in which industry comment should play a significant role in shaping the document.

In public meetings, NRC has acknowledged that DG-1097 includes guidance that has not been promulgated previously as NRC staff positions. However, other than a general comment that any instances of new guidance were to be viewed as "best practices" for voluntary licensee consideration rather than NRC imposition, little clarification is provided of the document's use.

Given the above, the principal industry concern remains one of expectations and implementation of this regulatory guide. The characterization of this regulatory guide as a NRC "best practices" document is novel. Unlike most regulatory guides that provide guidance for new or revised regulations, this one compiles guidance for a regulation in effect for approximately 20 years. A "best practices" document that contains numerous statements directly related to the preferred design features of facilities already in operation is problematic. It would be more appropriate for designing new plants.

A "best practices" document in the form of a regulatory guide could easily become the standard by which current plants are judged, especially in specific new fire protection program elements not currently addressed in plant licensing documents, even if a licensee does not explicitly commit to the new guidance.

We recommend the following:

1. NRC should remove the new guidance from the compilation of existing guidance (the original intent) in DG-1097. The new guidance could be compiled in a NUREG. Those aspects that warrant pursuit as new NRC staff positions, should be subjected to a regulatory analysis, and promulgated in accordance with NRC staff processes. This approach would alleviate many industry concerns about the application of new guidance to current plant fire protection and safe shutdown programs.

2. NRC should amend the Section D, Implementation, and the conforming paragraphs of Section A, Introduction, of DG-1097, as provided in the enclosure to this letter. The wording suggestions are provided to make it more clear to licensees and NRC staff what was intended by the issuance of this regulatory guide.

Although time constraints have prevented us from providing a detailed listing of the comments unresolved from our January letter as well as new comments resulting from review of DG-1097, we plan to provide such information to NRC next week.

As noted earlier, DG-1097 can be an important tool in clarifying regulatory guidance and promoting consistent NRC inspection of, and licensee compliance with, current fire protection regulations. We appreciate the effort NRC has made in this direction. Unfortunately, the current version of DG-1097 has the potential to exacerbate rather than ameliorate future disagreements of what are acceptable approaches or positions relative to compliance with fire protection regulatory requirements.

We look forward to an improved document that addresses the issues raised here. NEI is prepared to meet with the NRC staff to address these issues in more detail.

Sincerely,

David J. Modeen

FAE/maa
Enclosure

c: Mr. John Hannon, US Nuclear Regulatory Commission

Mr. Eric Weiss, US Nuclear Regulatory Commission
Mr. Edward Connell, US Nuclear Regulatory Commission

Enclosure

Replacement Wording for DG-1097, Section D. Implementation

This Regulatory Guide is unusual because the underlying fire protection regulatory requirements for which it provides guidance have been in effect for many years and have been subjected to extensive interpretation by the NRC. In recognition of this unusual situation, appropriate, specific implementation guidance has been developed for this Regulatory Guide.

This Regulatory Guide provides a comprehensive compilation of staff views derived by selecting contributions from a combination of previously issued NRC fire protection guidance documents and other documents issued by various groups. However, this Regulatory Guide does not include all plant specific licensing positions that have been accepted by the NRC in plant specific Safety Evaluation Reports, exemptions, and deviations. Accordingly, the guidance in this Regulatory Guide does not supersede the licensing basis of any plant that have been accepted by the NRC, and, therefore, does not constitute the elements of a minimum acceptable program for achieving compliance with NRC fire protection requirements.

Any new material that is contained in this Regulatory Guide is for licensee information only and should not be considered new requirements. No backfitting is intended or approved in connection with this Regulatory Guide. Each individual plant's licensing basis will be used as the standard for evaluating licensee compliance with NRC regulatory requirements, as well as proposed programmatic changes and licensee submittals. The NRC Staff will not use the Regulatory Guide as the standard by which either licensee compliance or design changes and submittals by licensees are reviewed.

The Regulatory Guide is not intended for use as the fire protection / fire safe shutdown inspection guide, nor should this document be used as the source of determining the degree of degradation while performing the SDP process for fire protection findings. Licensees may use this Regulatory Guide as a source of comparison for their fire protection programs; however, there is no requirement for performing such a comparison.

Conforming changes to Section A, Introduction

1. To the end of the paragraph which begins "Section C..." add:

   "This new guidance, however, does not constitute new staff positions, because this new guidance has not been subject to evaluation under the backfit rule, 10 C.F.R. 50.109."

2. Rewrite the first paragraph after the one sentence paragraph which begins "Section D..." as follows:

   "This regulatory guide has been developed to provide a comprehensive compilation of fire protection guidance which includes suggestions from several sources. Where these suggestions are inconsistent with licensing positions that have been accepted by the NRC in plant specific Safety Evaluation Reports, these suggestions do not supersede the NRC approved licensing basis of any plant. Nevertheless, this guide may be used by licensees for self-assessments and by the NRC as the deterministic basis for future rulemaking."

3. Add to the end of the following paragraph in Part A the following sentence:

   "In this case, because the NRC's fire protection regulations have been in effect for many years and have been the subject of extensive interpretations by the NRC, this regulatory guide has a special role which is described in the appropriately specific implementation guidance described in Part D."