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P.O. Box 1002, Glen Rose, Texas 76043

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**STRATEGIC TEAMING AND RESOURCE SHARING (STARS)  
COMMENTS ON DRAFT REGULATORY GUIDE DG-1139, "RISK-  
INFORMED, PERFORMANCE-BASED FIRE PROTECTION FOR  
EXISTING LIGHT-WATER NUCLEAR POWER PLANTS"  
(69 FR 60192)**

Gentlemen:

Attached are comments from the Strategic Teaming and Resource Sharing (STARS)<sup>1</sup> nuclear power plants regarding Draft Regulatory Guide DG-1139, "Risk-Informed, Performance-Based Fire Protection for Existing Light-Water Nuclear Power Plants." The STARS plants have been actively working with the Nuclear Energy Institute (NEI) to develop comments on this draft regulatory guide and to address other fire protection issues that are at the fore-front of the industry and the NRC.

The STARS plants appreciate the effort that was expended in creating this draft document. NRC endorsement, without exception or clarification, of the industry guideline NEI 04-02, "Guidance for Implementing a Risk-Informed, Performance-Based Fire Protection Program under 10 CFR 50.48(c)," will be an important first step for those nuclear facilities that may choose to voluntarily adopt this new rule. STARS is concerned, though, that the NRC intends to issue this regulatory guide even though a significant amount of information that should be endorsed or referenced in the final regulatory guide is still pending and will not be incorporated into the final regulatory guide when it is issued. Therefore, issuance of the final regulatory guide may be premature and of limited benefit.

<sup>1</sup> STARS is an alliance of six plants (eleven nuclear units) operated by TXU Power, AmerenUE, Wolf Creek Nuclear Operating Corporation, Pacific Gas and Electric Company, STP Nuclear Operating Company and Arizona Public Service Company.

SIS Review Complete

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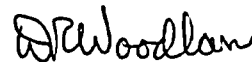
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The regulatory treatment of "deviations" to fire protection requirements during transition to a fire protection program allowed by 10 CFR 50.48(c) is also an area of concern. Provisions should be provided in the regulatory guide to recognize the fact that the current licensing basis for some licensees may include deviations to fire protection requirements that did not receive formal review and approval by the NRC. Following the "safe-today, safe-tomorrow" approach, licensees should be able to carry these deviations forward into the new fire protection program allowed by 10 CFR 50.48(c) without fear of regulatory enforcement provided that the conditions described in the original deviation, as may be modified under the conditions of the existing fire protection program, are still representative of current plant operations and configuration.

The STARS plants appreciate the opportunity to comment on this draft regulatory guide. Please contact Don Woodlan at 254-897-6887 or [dwoodla1@txu.com](mailto:dwoodla1@txu.com) if you have any questions or require additional information regarding these comments.

Sincerely,



D. R. Woodlan, Chairman  
Integrated Regulatory Affairs Group  
STARS

Attachment

**ATTACHMENT TO STARS-04021**

**STARS Comments regarding DG-1139,**  
**“Risk-Informed, Performance-Based, Fire Protection**  
**for Existing Light-Water Nuclear Power Plants”**

STARS Comments regarding DG-1139, "Risk-Informed, Performance-Based,  
Fire Protection for Existing Light-Water Nuclear Power Plants"

1. Section A, Introduction, 5<sup>th</sup> paragraph, states that this draft regulatory guide "endorses NEI 04-02, Revision F, with some exceptions and clarifications." This section then states that the staff plans to address and resolve the public comments, along with NEI and interested members of the public, prior to issuing the final regulatory guide. Based on this information, it is expected that this draft regulatory guide will be greatly simplified, and that it will endorse NEI 04-02, Revision 0, without exception or clarification.
2. Section B, Discussion, 4<sup>th</sup> paragraph, last sentence - this statement implies that licensees may use specific risk-based or performance-based alternatives included in the 2001 Edition of NFPA 805 without submitting a license amendment. Clarification should be provided, consistent with the requirements of the regulation and guidance document, to clearly state the requirements for using the alternative approaches provided in NFPA 805, 2001 Edition.
3. Section B, Discussion, 4<sup>th</sup> paragraph – this paragraph appears to limit the use of future editions of NFPA 805 by a licensee, via a license amendment, to only those areas pertaining to risk-based or performance-based alternatives. However, a licensee may request an exemption to 10 CFR 50.48(c) to adopt a newer edition of NFPA 805 in its entirety. The last sentence should be modified to include use of future editions of NFPA 805 by requesting an exemption, or voluntarily as a result of direct rulemaking to adopt future editions.
4. "Fire Protection Program Transition" – the second sentence of the 1<sup>st</sup> paragraph refers to license amendments, exemptions or deviations that have been previously approved by the NRC for the plant. It should be noted that the NRC may not have issued a formal "approval" document, such as a safety evaluation report, for requested deviations. Therefore, the NRC is placing the licensee in a situation where the licensee must make a determination of whether or not the NRC tacitly approved the requested deviation. It is suggested that this guidance be clarified by stating that not all deviations were explicitly approved by the NRC. In these cases, it is still the licensee's responsibility to verify that the deviation is still relevant and representative of the current plant operations and configuration.

This section should also recognize that changes may have been made to deviations using the provisions of the standard license condition. The fact that a deviation, or a change thereto, may not have received formal NRC review and approval should not be used as a criterion for determining whether or not the change represents a noncompliance. Non-compliance should be determined solely on the merits of the deviation. Does it provide an adequate level of safety, and is it appropriate for the current plant operating conditions and configuration? If so, then the deviation should be acceptable and not subject to regulator enforcement due to the fact that it may not have been formally approved by the NRC.

STARS Comments regarding DG-1139, "Risk-Informed, Performance-Based,  
Fire Protection for Existing Light-Water Nuclear Power Plants" (continued)

5. "Fire Protection Program Transition", 3<sup>rd</sup> paragraph, 2<sup>nd</sup> sentence - the modified fire protection program cannot be implemented until the approved license amendment is received by the licensee. This sentence should be modified to provide this clarification.
6. "Transition Identified Noncompliance and Interim Enforcement Discretion Policy", last paragraph, 2<sup>nd</sup> sentence – add clarification that the "letter" is the licensee's notice of withdrawal letter.
7. "Appendices to NFPA 805" - the purpose of this regulatory guide is to endorse NEI 04-02, Revision 0, as an acceptable method for meeting the requirements of 10 CFR 50.48(c). Therefore, the focus of the RG should be directed to NEI 04-02, not to NFPA 805, which has already been endorsed by virtue of rulemaking. This section, and other sections pertaining solely to NFPA 805, should be deleted or modified to address a corresponding section of NEI 04-02.
8. Section C, Regulatory Position – this section will change significantly based on expected comment resolution and revision of NEI 04-02, Revision F. NEI 04-02, Revision 0, should be endorsed without comment or exception.
9. Section 2.1, Fire Protection Program Noncompliance – this section states that certain portions of NEI 04-02 discuss NRC enforcement discretion during transition to NFPA 805. It is not appropriate for an industry guideline to provide, state, or otherwise define NRC policy. The information regarding NRC enforcement discretion provided in NEI 04-02 should be removed and relocated to this regulatory guide, or it should be revised to state "NRC enforcement discretion for noncompliance issues may be exercised during the transition to NFPA 805. Refer to the current NRC enforcement discretion policy provided in...."
10. Section 2.2, License Change Amendments - Section 4.6.1 and Appendix H of NEI 04-02, Revision F, should be revised to meet the requirements of NEI White Paper, "Standard Format for Operating License Amendment Requests from Commercial Reactor Licensees," and Regulatory Issue Summary 2001-22, "Attributes of a Proposed No Significant Hazards Consideration Determination."
11. Section 2.2, License Change Amendments - Section 4.6.1 and Appendix H of NEI 04-02, Revision F, should be revised to include the affidavit and/or sworn statement (28 USC 1746) that is required for license amendment requests.
12. Section 2.2, License Change Amendments - the standard license condition contains an incorrect reference. "10 CFR 48(a)" should be "10 CFR 50.48(a)."
13. Section 2.2, License Change Amendments - NFPA 805 is endorsed in two parts of the regulation. The reference to "10 CFR 50.48(c)(2)" should also include "10 CFR 50.48(c)(1)."

STARS Comments regarding DG-1139, "Risk-Informed, Performance-Based,  
Fire Protection for Existing Light-Water Nuclear Power Plants" (continued)

14. Section 2.2, License Change Amendments - the standard license condition does not account for the adoption of newer editions of NFPA 805 that may occur in the future. As stated, the license condition would require the licensee to adopt whatever edition of the standard that 10 CFR 50.48(c)(1) and 50.48(c)(2) currently endorse, without considering the fact that the licensee adopted a specific edition of the standard. The license condition should state the specific edition of the standard being adopted, with the ability to adopt later editions without prior NRC approval provided that the newer edition has been reviewed and approved for use by the NRC.
15. Section 3.1, NFPA 805 Fire Protection Program Change Evaluation Process - the NRC should review, resolve comments, and endorse the guidance provided in NEI 02-03, "Guidance for Performing a Regulatory Review of Proposed Changes to the Approved Fire Protection Program," as soon as possible.
16. Section 3.1.1, Configuration Control and Change Screening - this section suggests using 10 CFR 50.59(a)(1) as a method to identify changes that require an evaluation. With respect to fire protection program changes, this is a misapplication of 10 CFR 50.59. 10 CFR 50.59(c)(4) states "The provisions in this section do not apply to changes to the facility or procedures when the applicable regulations establish more specific criteria for accomplishing such changes." 10 CFR 50.48(c)(3)(i) allows a licensee to adopt a fire protection program that complies with NFPA 805. NFPA 805 provides specific criteria for accomplishing changes to the fire protection program. Therefore, per 10 CFR 50.59(c)(4), 10 CFR 50.59 does not apply for fire protection program changes. However, there may be certain activities for which a license would need to apply both the requirements of 10 CFR 50.59 and that of 10 CFR 50.48(c). The requirements of each regulation should consider only those effects that are pertinent to the scope of the regulation being applied. The reference to 10 CFR 50.59 in this section should be either deleted, or modified to reflect the requirements of the regulations.
17. Section 3.1.1, Configuration Control and Change Screening - this section appears to be editorial in nature. This section should be revised to simply reflect that the configuration control and change guidance provided in NEI 04-02 is endorsed without exception.
18. Section 3.1.2, Fire Protection Program Change Evaluations - this section appears to repeat information provided in NEI 04-02 and NFPA 805. This section should simply state that the guidance provided in NEI 04-02 is endorsed without exception. This comment also applies to the other sections of the regulatory guide where information is repeated, but no new information is provided.

STARS Comments regarding DG-1139, "Risk-Informed, Performance-Based, Fire Protection for Existing Light-Water Nuclear Power Plants" (continued)

19. Section 3.1.2, Fire Protection Program Change Evaluations, (c) - this section states that risk increases do not need to be individually tracked for Region IV, although cumulative risk should be tracked. If the risk increase associated for a proposed change is so insignificant that the increase is essentially imperceptible (Region IV), then it would take a significant number of such changes for the risk to be increased to where a definite change is perceptible. Tracking such small changes in risk is an undue burden that does not result in any increase in benefit or nuclear safety. This requirement should be deleted.
20. Section 3.1.2, Fire Protection Program Change Evaluations, (d) - this section adds an additional new requirement to changes that are justified using deterministic approaches. The requirement to assess risk for deterministic changes is inappropriate, since changes that are justified using a deterministic approach have been deemed acceptable without consideration of risk, i.e., they are inherently "safe." This requirement should be deleted since it does not provide any benefit or increase in nuclear safety, and it is inconsistent with how other deterministic regulations are applied.
21. Section 3.2, Fire Protection Program Documentation, 3<sup>rd</sup> sentence - this sentence should be expanded to also state the "design-basis document" should not be confused with the plant-specific "licensing basis documentation."
22. Section 4.2, Fire Models, 3<sup>rd</sup> paragraph - it is unclear from this paragraph if the NRC intends to issue safety evaluations for each of the models that the NRC will review and approve for use for fire modeling. The NRC should treat fire models in the same fashion that other evaluation methodologies, such as that used for structural, SSC performance, or accident response analyses (etc.), are treated. The NRC should document their review and approval of each model in a safety evaluation report (SER). The SER should identify the limitations and constraints associated with the model being reviewed. Licensees should be able to implement the approved model, without receiving prior NRC approval provided that the licensee meets certain quality assurance/control and experience requirements, the model is used within the limitations and constraints provided in the SER, and the model is appropriate for the intended application.
23. Section 4.2, Fire Models, 4th paragraph - licensees should be provided with the flexibility to use non-standard models that have been reviewed and approved by the NRC for use by a different licensee without prior NRC approval provided that the same conditions described in 22 above are met. The information provided in this comment, along with comment 22, are generally consistent with the guidance provided in NEI 96-07, Revision 1, "Guidelines for 10 CFR 50.59 Implementation."
24. This regulatory guide intends to endorse a significant amount of other items, ranging from fire models, guidance for fire PRAs, to industry guidance documents such as that pertaining to circuit analysis (NEI 00-01). The issuance of this regulatory guide may be premature due to the amount of pending information that is to be incorporated into this regulatory guide.