

March 29, 2006

Mr. Marvin S. Fertel, Senior Vice President
and Chief Nuclear Officer
Nuclear Energy Institute
1776 I Street NW, Suite 400
Washington, D.C. 20006

Dear Mr. Fertel:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated February 28, 2006, concerning the use of operator manual actions to address industry fire protection program concerns. The Commission appreciates your comments and acknowledges the effort that industry has made to assist the staff in developing a consistent set of criteria for evaluating operator manual actions.

The Commission approved the withdrawal of the manual actions rulemaking in Staff Requirements Memorandum (SRM), SECY-06-0010, dated February 8, 2006. In approving the staff's proposal to withdraw the rulemaking, the Commission recognized that relying on exemption requests may cause significant expenditure of NRC staff and licensee resources. As such, the Commission noted that it continues to support the risk-informed and performance-based option provided by Title 10 of the *Code of Federal Regulations* Part 50.48(c) (10 CFR 50.48(c)) to resolve fire protection issues.

Additionally, the Commission directed the staff to obtain industry information on projected exemption requests, communicate to internal and external stakeholders the plans for enforcement discretion, and expeditiously update staff guidance on acceptable operator manual actions. Subsequently, the staff held a public meeting on March 1, 2006, to update members of the public concerning future activities to close this issue and receive related information from the industry. Based on the discussions during the meeting, the staff believes that the need for exemptions will be significantly less than suggested in your letter.

The NRC staff plans to issue a Regulatory Issue Summary (RIS) to reiterate the staff's expectations with respect to the use of operator manual actions in fire protection programs for nuclear power facilities. The RIS will address exemption requests for pre-1979 plants and options for post-1979 plants. Furthermore, the staff has initiated development of staff review guidance to evaluate operator manual actions for exemption requests, and the staff will consider your comments as well as your proposed acceptance criteria in developing the staff guidance.

With respect to the proposal in your letter, the Commission does not agree that NRC staff documents, such as inspection reports, can provide relief from compliance with applicable fire protection requirements. The appropriate regulatory vehicle (in the absence of rulemaking or a plant-specific order) is the issuance of an exemption under 10 CFR 50.12. As evidenced by the March 1, 2006 meeting, the NRC staff is ready to work with industry and other stakeholders to streamline the submission and review of exemption requests.

In conclusion, the Commission believes that the risk-informed and performance-based alternative provided by 10 CFR 50.48(c) and the exemption process available to licensees provide acceptable methods to address the fire protection rule.

Sincerely,

/RA/

Nils J. Diaz