

JOSEPH E. POLLOCK
Vice President, Nuclear Operations

1201 F Street, NW, Suite 1100
Washington, DC 20004
P: 202.739.8114
jep@nei.org
nei.org



April 30, 2013

Mr. David L. Skeen
Director, Japan Lessons Learned Project Directorate
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: NEI Comments on Revised NRC Options for Fukushima Near-Term Task Force Recommendation 1 – Regulatory Framework

Project Number: 689

Dear Mr. Skeen:

The NRC's Fukushima Near-Term Task Force (NTTF) Recommendation 1 stated that NRC should establish a "logical, systematic, and coherent regulatory framework for adequate protection that appropriately balances defense-in-depth and risk considerations." In November 2012, the Commission tasked the NRC staff to provide options and a staff recommendation for addressing Recommendation 1. NEI's December 13, 2012, letter provided initial industry comments on Recommendation 1, and on February 15, 2013, NRC staff published a draft paper which condensed the previous options and updated the cost information. The Nuclear Energy Institute (NEI)¹ appreciates the opportunity to provide specific comments on the staff's draft paper which are provided as an attachment to this letter.

Industry has carefully considered Recommendation 1 and concluded that there is little safety benefit to be derived from the comprehensive effort contemplated by the NTTF and outlined in the staff's draft paper. Although we agree that some specific improvements can reasonably be made in the area of beyond-design-basis requirements, we see little additional safety benefit in a complete reworking of the NRC's regulatory framework. Indeed, as the NRC staff points out in its draft paper, public health and safety, occupational health, and protection of both offsite and onsite property and the environment "are not expected to be affected under any of the alternatives" presented in the paper. The staff also emphasized that "[a] viable and

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

acceptable alternative to implementing any or all of these improvement activities would be to maintain the existing regulatory processes and framework." With no clear safety benefit in view, industry simply cannot support comprehensive changes to the regulatory framework.

Although we do not believe comprehensive changes are warranted, industry appreciates the staff's efforts to develop a clear problem statement for the Recommendation 1 effort. The staff's proposed problem statement states that "for beyond-design-basis events, the existing framework could be improved to facilitate *more consistent, efficient, timely, and transparent Commission decisions* to address new issues and information" (emphasis added). But these issues can be effectively addressed under existing regulatory processes, such as the backfit rule and the NRC's Regulatory Analysis Guidelines. Over the course of its history – and particularly over the past two years – the NRC has shown that it is fully capable of adequately addressing new events and new information as they arise. A comprehensive change to the existing regulatory framework is simply not necessary to address the staff's problem statement.

It is also important to emphasize, as the staff does in the draft paper, that a decision not to implement any of the proposed improvement activities is *not* a "do nothing" approach. The NRC would continue to improve portions of its processes and framework in response to operating experience, new information, or emergent issues – just as it has done in the past. In addition, there are several efforts already underway that overlap with the regulatory improvements contemplated by Recommendation 1. These include the Commission's recent direction for the staff to reexamine certain aspects of its regulatory analysis framework in Staff Requirements Memorandum to SECY-12-0010, "Consideration of Economic Consequences Within the U.S. Nuclear Regulatory Commission's Regulatory Framework," as well as its direction to the staff in COMGEA-12-0001/COMWDM-12-0002 to develop a staff paper with "approaches for allowing licensees to propose to the NRC a prioritization of the implementation of regulatory actions as an integrated set and in a way that reflects their risk significance on a plant-specific basis."

Recommendation 1 must also be evaluated in the context of the cumulative impacts of regulation. Over the last several years, the cumulative impact of regulation has become an important consideration for both the industry and NRC. As the Commission recently noted in the Staff Requirements Memorandum to SECY-12-0137, "The staff should continue to develop and implement outreach tools that will allow NRC to consider more completely the overall impacts of multiple rules, orders, generic communications, advisories, and other regulatory actions on licensees and their ability to focus effectively on items of greatest safety import." Consistent with this direction, the NRC and industry are scrutinizing all regulatory activities for the burden they create in relation to safety benefit, with the intent of prioritizing the activities with the most tangible safety benefit. Recommendation 1 should not escape this same scrutiny. Even if Recommendation 1 does not result in implementation of substantive requirements on licensees, it would still add to the overall cumulative impact because it constitutes a substantial effort to reconsider a regulatory framework that has generally been in place since the advent of the industry. Both the NRC and industry would necessarily be required to redirect resources (in the form of management, staff, expertise) from ongoing current issues to deal with whatever technical, regulatory, and legal issues are associated with a new regulatory proposal. For example,

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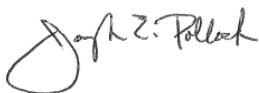
Recommendation 1 would conceivably involve a substantial impact with respect to probabilistic risk assessments, thus requiring persons with such expertise today to divert their attention from ongoing regulatory matters (e.g. seismic and fire risk evaluations) to this issue.

While we cannot support a large-scale effort to reform a regulatory framework that is already effectively ensuring adequate protection of the public health and safety, industry believes that there are some more specific improvements suggested in the draft paper that warrant further consideration. For instance, there could be significant benefit in developing a Commission policy statement or other agency guidance regarding the "application of a specified (and reduced) set of risk-informed treatment requirements for structures, systems, and components (SSCs) needed" to cope with beyond-design-basis events. This agency guidance should provide clarity on the regulatory treatment of SSCs intended to address more remote beyond-design-basis events and severe accidents and how they should be differentiated from SSCs intended to address design basis events and accidents. A clear Commission policy on the regulatory treatment of beyond-design-basis events would be helpful to inform the three ongoing rulemakings that are currently contemplating beyond design basis and severe accident regulatory considerations. Approaching these rulemakings in an integrated and structured manner will essentially establish the framework in a more timely and effective manner.

At the most recent Regulatory Information Conference, Commissioner Ostendorff noted that "the NRC's regulatory framework is not broken and calling it a patchwork unfairly paints it in a negative light. As I stated in my first vote on the Near-Term Task Force Report, the 'use of the word 'patchwork' diminishes the dynamic, evolving nature of the NRC's regulatory framework.'" Commissioner Ostendorff further went on to note that "everything that I have seen during my time as a Commissioner has suggested that our current regulatory process has served us well." We strongly agree with these statements, and encourage the staff to reconsider the scope and necessity of this effort.

Industry appreciates the opportunity to provide perspective on the concept of a revised regulatory framework. If you have any questions in this regard, please do not hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "Joseph E. Pollock". The signature is fluid and cursive, with a large initial "J" and "P".

Joseph E. Pollock

Attachment

c: Mr. Richard F. Dudley, Jr., NRR/DPR/PRB, NRC