

December 13, 2016

Mr. David R. Kline
Director, Nuclear Security
Nuclear Energy Institute
1201 F Street, NW, Suite 1100
Washington, DC 20004

SUBJECT: REQUEST FOR NRC ENDORSEMENT OF REVISED SECTION 21
"COMPENSATORY MEASURES" TO NEI 03-12 "TEMPLATE FOR SECURITY
PLAN, TRAINING AND QUALIFICATION, SAFEGUARDS CONTINGENCY
PLAN, [AND INDEPENDENT SPENT FUEL STORAGE INSTALLATION
SECURITY PROGRAM]"

Dear Mr. Kline:

On May 25, 2016, you submitted a letter (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16222A416) on behalf of the nuclear energy industry and the Nuclear Energy Institute (NEI) to the U.S. Nuclear Regulatory Commission (NRC) via encrypted email. In your letter you requested that the NRC staff review and endorse a proposed revision to Section 21, "Compensatory Measures," of the previously NRC-endorsed Revision 7 of NEI 03-12, "Template for Security Plan, Training and Qualification, Safeguards Contingency Plan, [and Independent Spent Fuel Storage Installation Security Program]" commonly referred to as the "Security Plan Template."

The current Section 21 of NEI 03-12, Revision 7 describes a graded generic approach that can be used by licensees in determining the "types" of compensatory measures that would be appropriate in response to a failure or degradation of the physical protection program, to include predetermined "generic timeframes" within which those measures would be taken. As currently described in Section 21 of NEI 03-12, Revision 7, licensees are responsible to take immediate actions that may or may not be equivalent to the failed or degraded equipment or system, and as soon as the licensee has the capability to do so, the licensee is responsible to implement an equivalent measure to restore compliance with applicable Commission requirements. The proposed Section 21 describes a similar graded generic approach that would permit the application of compensatory measures and would relieve licensees from the current "immediate" actions and associated timeframes within which equivalent actions would be taken in response to physical protection program degradations and/or failures.

In considering the potential endorsement of the proposed Section 21, the NRC sees value in better risk informing compensatory measures and associated timeframes. However, as discussed in our September 1, 2016, meeting, the NRC informed you that a clearly defined technical basis/rationale is needed to support this request. The proposed Section 21 does not sufficiently address or identify the technical basis needed to support a conclusion that the compensatory measures and extended implementing timeframes contained in the proposed Section 21 would be acceptable relative to ensuring the licensee's ability to satisfy or restore compliance with Commission requirements contained in 10 CFR Part 73. Absent a clear and understandable supporting technical basis, the NRC staff cannot determine the acceptability of the changes described in the proposed Section 21.

Further, as discussed in our November 16, 2016, meeting, the NRC described the content of any supporting technical basis/rationale and emphasized the importance for each licensee to validate the applicability of any compensatory measures and extended implementing timeframes to their site-specific conditions. Acceptance of the proposed Section 21 must be based upon a site-specific analysis which demonstrates how the application of compensatory measures and extended timeframes does not decrease the effectiveness of the physical security plans. The site-specific analysis must consider the negative impact that any given failure or degradation has on the site-specific physical protection program and must describe how other features of the physical protection program (i.e., defense-in-depth) mitigate this negative impact and support the application of compensatory measures for each proposed timeframe before an equivalent measure is implemented and/or repairs completed. The NRC also emphasized that where there is any indication of an insider threat and/or other site-specific threat such as willful destruction or tampering, the current "immediate actions" must be applied and an equivalent measure implemented as soon as possible until repairs are completed and compliance restored.

In conclusion, the NRC staff has completed the review of your May 25, 2016, request for endorsement of the proposed Section 21 to NEI 03-12. The NRC staff has determined that this request is not adequately supported and therefore cannot be granted. As discussed in our November 16, 2016, meeting, should you desire additional NRC consideration of the proposed changes to the generic approach described in the current Section 21, the NRC recommends that you re-submit this request with a detailed risk-informed technical basis/rationale that demonstrates that the proposed changes do not decrease the effectiveness of the security plans and ensures the capability for licensees to maintain adequate protection against the design basis threat of radiological sabotage described in 10 CFR 73.1 throughout the implementation of the proposed changes. Additionally, any future submittal of the proposed Section 21 of NEI 03-12 and/or other revisions to NEI 03-12 may be subject 10 CFR Part 170 "Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended."

Should you or your staff have any questions, please contact Alison Rivera, Chief, Reactor Security Branch, at 301-287-3750 or at email Alison.Rivera@nrc.gov.

Sincerely,

/RA/

James W. Andersen, Director
Division of Security Policy
Office of Nuclear Security and Incident Response

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Sincerely,

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James W. Andersen, Director
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