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Draft Letter to the Nuclear Energy Institute Regarding the Clarification of Regulatory Paths for Lead Test Assemblies

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Draft Letter to Nuclear Energy Institute Regarding Clarification of Regulatory Paths for Lead Test Assemblies

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General Comment

Draft Letter to NEI TS 4.2.1 Interpretation Constitutes a de facto License Amendment

The Atomic Energy Act section 189a. requires the Commission to afford interested persons an opportunity for a hearing on the granting, suspending, revoking or amending of any license. A licensee cannot amend the terms of its license unilaterally. Agency approval or authorization is a necessary component of Commission action that affords a hearing opportunity under section 189a., but not all agency approvals granted constitute de facto license amendments. To determine whether an approval constitutes a de facto license amendment, there are two key factors to consider: Whether the approval (1) granted the licensee any greater operating authority or (2) otherwise altered the original terms of a license.

The draft letter to NEI interpretation of TS 4.2.1 can be considered an agency approval or authorization. Thus it is appropriate to examine the key factors that must be considered to determine if a de facto license amendment may be involved. The interpretation attempts to grant greater operating authority by permitting the use of fuel assemblies (LTAs) with cladding material and/or fuel that differs from that described in the Design Features section of TS. This also constitutes an alteration from the original terms which in accordance with the requirements of 10 CFR 50.36 incorporated specific restrictions on fuel assembly cladding and fuel type. Thus the interpretation could only be implemented by use of a process that affords interested persons an opportunity for a hearing, such as the license amendment process.

Specifically and inexplicably, the draft letter to NEI indicates that licensees do not need license amendments for use of LTAs with cladding or pellet materials different than those currently specified in the TSs for all fuel

assemblies. In addition, the draft letter to NEI indicates licensees do not need to use NRC staff approved codes and methods for analyzing LTAs (this is discussed in more detail in Issue 5 below).

Based on the analysis in Section 2.0, Interpretation of TS Language Related to LTAs and Need for License Amendments, of Enclosure 2, to memorandum dated March 22, 2018, Use of Open Door Policy Regulatory Framework Regarding Use of LTAs (ML18078A011) it is concluded that, if a licensee desires to use an LTA of a different cladding or pellet material than currently specified in the design features TS for fuel assemblies, a license amendment request must be submitted. In addition, prior to use, LTAs must be analyzed with applicable NRC staff approved codes and methods.