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March 17, 2016

Ms. Annette Vietti-Cook  
Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
ATTN: Rulemakings and Adjudications Staff

**Subject:** Industry Comments on the NRC Advance Notice of Proposed Rulemaking (ANPR) on Regulatory Improvements for Decommissioning Power Reactors; Docket ID: NRC-2015-0070

**Project Number: 689**

Dear Ms. Vietti-Cook:

On November 19, 2015, the U.S. Nuclear Regulatory Commission (NRC) issued a notice in the *Federal Register* soliciting public comments on potential modifications to the agency's decommissioning regulations.<sup>1</sup> This letter provides the comments of the Nuclear Energy Institute (NEI)<sup>2</sup> on behalf of the nuclear energy industry (Attachment 1) and includes a specific proposal for a limited-scope rulemaking (Attachment 2).

NEI believes that the NRC should proceed with a rulemaking to modify the requirements applicable to reactors undergoing decommissioning in order to appropriately align the regulatory requirements with the reduced risk profile associated with those facilities. The proposed changes to the current rules (described in Attachment 2) are generally consistent with licensing actions that have been approved by the NRC (i.e., license amendments and exemptions) and would achieve the NRC's primary objective stated in the advanced notice of proposed rulemaking (ANPR) "to implement appropriate regulatory changes that reduce the number of licensing actions needed during decommissioning."<sup>3</sup>

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<sup>1</sup> 80 *Fed. Reg.* 72,358 (November 19, 2015).

<sup>2</sup> 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.

<sup>3</sup> 80 *Fed. Reg.* 72,361 (November 19, 2015).

Because many regulations applicable to operating reactors do not recognize the reduction in risk as facilities defuel and progress through the decommissioning process, reactors being decommissioned must either comply with requirements that were developed for operating reactors or request relief from those requirements through the exemption or license amendment process. Thus, the changes NEI is recommending would address the fact that the existing regulatory framework does not appropriately recognize the reduction in risk that results when a power reactor permanently ceases operation, defuels and decommissions.

Requiring facility-specific licensing actions and exemptions to implement changes that could be addressed generically is inefficient at best. (Attachment 3 documents the industry's analysis of the potential cost savings that could be achieved by implementing the proposed limited-scope rulemaking and is directly responsive to ANPR question GEN-5.b.) Requiring these individual licensing actions and exemptions also diverts significant industry and NRC resources that could be better applied to assuring the safe completion of the decommissioning process. Consistent with the goals of NRC's Project AIM,<sup>4</sup> we believe that it is imperative for the NRC to address these inefficiencies.

We recommend a focused rulemaking to address the current transitional inefficiencies for two reasons. First, it will help ensure that the rulemaking is sufficiently timely to relieve licensees decommissioning in the near-term from the burden associated with individual licensing actions. A sufficient regulatory basis for a limited-scope rule already exists given the exemptions and license amendments that the NRC has recently approved for ongoing decommissioning projects.<sup>5</sup> Therefore, the NRC should proceed directly to publishing a proposed rule for public comment.

Second, there is no indication that *other aspects* of the regulations associated with decommissioning require revision. Rather, we note that 10 domestic commercial power reactors have already been safely decommissioned with the funds accrued under the NRC's regulatory regime, and 18 additional reactors are successfully progressing toward decommissioning. In all of these cases, the NRC's existing decommissioning regulations have proven to be highly effective in protecting public health and safety and avoiding environmental impacts.

As more clearly set forth in Attachment 2, NEI's proposed revisions are in areas including emergency planning, security, insurance, work hours, staffing/training, aging management, backfitting and use of the decommissioning trust fund. The new requirements would be an alternative to the current requirements;<sup>6</sup> they address the transition taking place at four key points once a reactor has ceased

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<sup>4</sup> SECY-15-0015, PROJECT AIM 2020 REPORT AND RECOMMENDATIONS, January 30, 2015.

<sup>5</sup> See our response to ANPR Question for Specific Consideration GEN-5.d in Attachment 1.

<sup>6</sup> Industry recommends that the NRC implement the proposed changes as an alternative to the current requirements, rather than imposing the changes as a backfit. The NRC's long-standing backfitting guidance states:

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operations in order to eliminate the need for licensing actions and exemptions at these points. The transition points are:

- the reactor is permanently defueled – § 50.82(a)(1) certifications are docketed
- the reactor is permanently defueled with qualifying spent fuel pool analysis<sup>7</sup>
- all fuel is in dry storage
- all fuel has been removed from site.

In sum, NEI strongly urges the agency to undertake a limited-scope rulemaking as expeditiously as possible, while allowing the NRC staff to remain committed to the timely review of exemptions and license amendments that are necessary in the meantime.

Thank you for the opportunity to provide the industry's views in response to the ANPR. We look forward to discussing our proposal in the public dialogue on this rulemaking. If you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,



Rod McCullum

Attachment

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The backfit rule applies to actions that impose positions or requirements on licensees; it does not apply to requested actions that are optional or voluntary. Generally, it does not apply to relaxations. However, if requirements are reduced but made mandatory, the backfit rule would apply if licensees are required to make the changes in order to achieve a greater level of safety.

"Backfitting Guidelines," NUREG-1409, at pg. 2 (July 1990) (footnotes omitted). The charter of the Committee to Review Generic Requirements (CRGR) provides additional context on "voluntary relaxations" and "voluntary actions," which do not meet the definition of backfitting. "Charter: Committee to Review Generic Requirements," Rev. 8, at FN 5 (March 2011).

<sup>7</sup> Licensee is able to demonstrate, using an NRC approved methodology, that no design basis accident capable of resulting in radiation doses to the public in excess of EPA's Protective Action Guidelines exist and that an NRC approved beyond design basis scenario can be mitigated. Because the basis for these step-downs is already NRC approved, no licensee submittals to NRC would be required at this point. Licensee's ability to demonstrate compliance would be subject to NRC inspection.