

Commission's decision in Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Unit 1), CLI-96-13, 44 NRC 315 (1996), the proposed rule would require NRC approval to be provided by issuance of a license amendment. The Nuclear Energy Institute (NEI) submitted a paper, "License Amendments: Analysis of Statutory and Legal Requirements" (NEI Analysis) in a July 10, 2002, letter to the Director of NRR. In this analysis, NEI contends that approval of a licensee's/applicant's request to implement § 50.69 need not be accomplished by a license amendment. NEI essentially argues that the proposed rule does not increase the licensee's operating authority, but merely provides a "different means of complying with the existing regulations * * *". Id., p.8. The Commission disagrees with this position, inasmuch as proposed § 50.69 would permit the licensee/applicant, once having obtained approval from the NRC, to depart from compliance with the "special treatment" requirements set forth in those regulations delineated in § 50.69. NEI also argues that the NRC's review and approval of the SSC categorization process under proposed § 50.69 is analogous to the review and approval process in Perry, which the Commission determined did not require a license amendment. Unlike the Perry case, where the license already provided for the possibility of material withdrawal schedule changes and the governing American Society for Testing and Materials (ASTM) standard set forth objective, non-discretionary criteria for changes to the withdrawal schedule, § 50.69 does not contain such criteria for assessing the adequacy of the PRA process, PRA review results, and the sensitivity studies. Hence, the NRC's approval of a request to implement § 50.69 will involve substantial professional judgment and discretion. In sum, the Commission does not agree with NEI's assertion that the NRC's approval of a request to implement § 50.69 may be made without a license amendment in accordance with the Perry decision.

The Commission does not believe it necessary to perform a prior review of the treatment processes to be implemented for RISC-3 SSCs in lieu of the special treatment requirements. Instead, the NRC has developed proposed § 50.69 to contain requirements that ensure the categorization is robust to provide high confidence that SSC safety significance is correctly determined; sufficient requirements on RISC-3 SSCs to provide a level of assurance that these

SSCs remain capable of performing their design basis functions commensurate with their low safety significance; and requirements for obtaining sufficient information concerning the performance of these SSCs to enable corrective actions to be taken before RISC-3 SSC reliability degrades beyond the values used in the evaluations conducted to satisfy § 50.69(c)(1)(iv). The NRC concludes that compliance with these requirements, in conjunction with inspection of § 50.69 licensees is a sufficient level of regulatory oversight for these SSCs.

The Commission recognizes that this proposed rule may have implications with respect to NRC's reactor oversight process including the inspection program, significance determination process, and enforcement approach. In its final decision on this rulemaking, the Commission proposes to document its conclusions as to whether new or revised inspection or enforcement guidance is necessary.

The Commission included requirements in the proposed rule for documenting categorization decisions to facilitate NRC oversight of a licensee's or applicant's implementation of the alternative requirements. The proposed rule would also include provisions to have the FSAR and other documents updated to reflect the revised requirements and progress in implementation. These requirements will allow the NRC and other stakeholders to remain knowledgeable about how a licensee is implementing its regulatory obligations as it transitions from past requirements to the revised requirements in § 50.69. As part of these provisions, the Commission has concluded that requiring evaluations under § 50.59 (for changes to the facility or procedures as described in the FSAR) or under § 50.54(a) (for changes to the quality assurance plan) is not necessary for those changes directly related to implementation of § 50.69. For implementation of treatment processes for low safety-significant SSC, in accordance with the rule requirements contained in § 50.69, the Commission concludes that requiring further review as to whether NRC approval might be required for such changes is unnecessary burden. If a licensee is satisfying the rule requirements, as applied to RISC-3 SSC, the Commission could not postulate circumstances under which NRC approval of such changes would be required. Thus, a licensee would be permitted to make changes concerning treatment requirements that might be contained in these documents. The Commission is

limiting this relief to changes directly related to implementation (with respect to treatment processes). Changes that affect any non-treatment aspects of an SSC (e.g., changes to the SSC design basis functional requirements) are still required to be evaluated in accordance with other regulatory requirements such as § 50.59. This rulemaking is only risk-informing the scope of special treatment requirements. The process and requirements established in § 50.69 do not extend to making changes to the design basis of SSCs.

III.7.0 Adequate Protection

The Commission believes that reasonable assurance of adequate protection of public health and safety will be provided by applying the following principles in the development and implementation of proposed § 50.69:

- (1) The net increase in plant risk is small;
 - (2) Defense-in-depth is maintained;
 - (3) Safety margins are maintained;
- and
- (4) Monitoring and performance assessment strategies are used.

As described previously, these principles were established in RG 1.174, which provided guidance on an acceptable approach to risk-informed decision-making consistent with the 1995 Commission policy on the use of PRA. Proposed § 50.69 was developed to incorporate these principles, both to ensure consistency with Commission policy, and to ensure that the proposed rule maintains adequate protection of public health and safety.

The following discusses how proposed § 50.69 meets the four criteria, and as a result, maintains adequate protection of public health and safety.

III.7.1 Net Increase In Risk is Small

Proposed § 50.69 requires the use of a robust, risk-informed categorization process that ensures that all relevant information concerning the safety significance of an SSC is considered by a competent and knowledgeable panel who makes the final determination of the safety significance of SSCs. The review and approval of the categorization process ensures that it meets the requirements of § 50.69(c) and that as a result, the correct SSC safety significance is determined with high confidence. Correctly determining safety significance of an SSC provides confidence that special treatment requirements are only removed from SSCs with low safety significance, and that these requirements continue to be satisfied for SSCs of safety significance. The proposed rule requires that the