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U.S. Nuclear Regulatory Commission
Attention: Mr. Michael T. Lesar
Chief, Rules and Directives Branch, Office of Administration
Mail Stop T6-D59
Washington, D.C. 20555-0001

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Rules and Directives
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SUBJECT: Solicitation of Public Comments on the Third Year of Implementation of the Reactor Oversight Process

REFERENCE: *Federal Register* Vol. 67, No. 226, Pages 70468 – 70470, dated November 22, 2002

Dear Mr. Lesar:

Entergy Nuclear South (Entergy) is pleased to submit our comments in the above captioned matter. In general, we believe the Reactor Oversight Process (ROP) is meeting your established performance goals and have provided detailed comments that may help to further improve the Process. The comments are grouped by the questions provided in the *Federal Register* Notice and are attached.

Thank you for the opportunity to provide these comments. If you have any questions concerning this submittal, please contact Rick Thomas (601-368-5747) or me (601-368-5758).

Sincerely,

MAK/RLT/
attachment

Template = ADM-013

F-RFDS = ADM-03
Add = M. Manley (MJM3)

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cc:

Mr. C. G. Anderson (ANO)
Mr. W. A. Eaton (GGNS)
Mr. P. D. Hinnenkamp (RBS)
Mr. J. R. McGaha (ECH)
Mr. G. J. Taylor (ECH)
Mr. J. E. Venable (W-3)

Mr. T. W. Alexion, NRR Project Manager, ANO-2
Mr. D. H. Jaffe, NRR Project Manager, GGNS
Mr. N. Kalyanam, NRR Project Manager, Waterford-3
Mr. W. D. Reckley, NRR Project Manager, ANO-1
Mr. M. K. Webb, NRR Project Manager, RBS

Entergy Response to Questions From *Federal Register* Volume 67, Number 226.

(1) Does the Performance Indicator Program minimize the potential for licensees to take actions that adversely impact plant safety?

Yes. The Reactor Oversight Process (ROP) has been successful in providing an impetus for additional focus on risk significant systems and components. Entergy has experienced an improving trend in most performance indicator (PI) monitored items. In other PI monitored areas - those not on an improving trend - performance has been essentially stable and acceptable. Allowance for overhaul credit to be applied to monitored systems is a good example of how the ROP recognizes that in order to improve overall performance, system maintenance must be performed. However, an appropriate level of control is exercised so that licensees do not abuse this allowance.

(2) Does appropriate overlap exist between the Performance Indicator Program and the Inspection Program?

In general, yes, but there are examples of excessive overlap. For example, the NRC inspects some areas of Radiation Protection (RP) and Emergency Preparedness (EP) which are already covered by performance indicators. If there is adequate performance as indicated by the PIs, then additional inspection should not be necessary. It would be a better use of resources if the NRC would reduce baseline inspection in these areas or reallocate the effort to other areas. Areas warranting investigation may include topics based on operating experience or newly emerging generic safety areas of concern (for example, reactor vessel head inspections).

Other areas of excessive overlap include inspecting each occurrence of single equipment failure and each uncomplicated scram, even though these areas are appropriately monitored using performance indicators. For example, a PI monitors scrams with loss of normal heat removal and establishes an acceptable threshold. For this situation, the NRC may commission an inspection and try to force-fit a finding related to the cause of the scram into the Significance Determination Process (SDP) and evaluate significance for greater than green. This is redundant and not appropriate. Either the PI adequately reflects the risk associated with a scram with loss of normal heat removal or it does not.

In addition, the industry believes that the NRC wastes resources by spending too much time verifying performance indicators and questioning items of minimal safety significance. An example is raising questions regarding unavailability durations of less than an hour over a fuel cycle. The inspection program is supposed to be risk informed. Spending time on questions with minimal safety significance is not an appropriate use of resources (this comment also applies to findings that do not relate to regulatory bases).

(3) Do reporting conflicts exist, or is there unnecessary overlap between reporting requirements of the ROP and those associated with the Institute of Nuclear Power Operations (INPO), the World Association of Nuclear Operations (WANO), or the Maintenance Rule?

Yes. There are differences in reporting and definitions amongst the ROP, WANO/INPO and maintenance rule. Many of the differences are being addressed in the pilot programs to test the new Mitigating System Performance Index and should be adopted if the pilot is successful. Industry is also working to reduce unnecessary duplicative reporting with the introduction of the Consolidated Data Entry system being developed by INPO.

(4) Does NEI 99-02, "Regulatory Assessment Performance Indicator Guideline" provide clear guidance regarding Performance Indicators?

No. The number and types of FAQs submitted since inception indicate that the guidance is not always clear or consistently interpreted. Examples where the guidance is lacking are Scrams with a Loss of Normal Heat Removal, Down Powers and Safety System Unavailability (SSU).

The intent of the Scram and Down Power indicators is good; implementation is ineffective. To appropriately capture trips and down powers within the PI, Entergy believes that excessive resources are applied to the evaluation and understandings of these events.

SSU has been improved over the past three years but more clarity is needed regarding the counting of hours (fault exposure, planned/unplanned, overhaul). The pilot in this area is a step in the right direction, especially the improvement in reliability aspects. A general observation, though, is that any efforts to risk inform PIs should include appropriate consideration of the goals of the ROP, i.e., a level playing field with consistent and comparable indicators and supporting risk bases.

(5) Is the information in the inspection reports useful to you?

Yes. The reports are for the most part objective and complete.

The inspection process experienced at Entergy sites involves Resident Inspector debriefs with appropriate site management to discuss issues/emerging issues on approximately a monthly basis. These timely meetings fill the gap between the verbal inspection exit and the issuance of the docketed inspection report.

Entergy believes that inspection reports should be limited to findings and violations of significance only - not subjective evaluations of perceived performance that may not be supported by any particular regulatory basis. Some "green" findings may be included within the summary of findings, on the NRC Web and in the Plant Issues Matrix. Since these findings may not be associated with any regulatory requirement, it is inconsistent and not appropriate that they be included in the plant assessment process. In addition, these findings could be mis-characterized by the public or others monitoring the NRC Web as representing actual regulatory requirements (it is recognized that a performance deficiency must exist before the deficiency is characterized as a finding). The NRC assessment of performance must be tied to regulatory requirements - not a subjective standard of performance. The ROP is a measure of relative safety performance. INPO and others assess efficiencies and performance improvement opportunities.

(6) Does the Significance Determination Process yield equivalent results for issues of similar significance in all ROP cornerstones?

No. Entergy has experienced what we characterize as "unintended consequences" in the risk assessment and use of the SDP for the areas of Emergency Planning (EP), Radiation Protection (RP), and Fire Protection (FP).

The EP SDP discusses that any findings are to be evaluated using the plant specific licensing bases. The discussion recognizes that a plant may have approved deviations from the regulations and that a plant's approved E-plan establishes the regulatory requirements for that plant. Entergy's experience indicates that NRC inspectors and management may not always follow the prescribed process in this respect and take actions without comparison to the approved licensing bases. This appears inappropriate in that the bases for any finding would most certainly hinge around a regulatory bases.

NRC seems to push the boundaries of backfit without openly recognizing it. In Entergy's example, the staff was unwilling to discuss regulatory interpretations during the inspection process with the licensee and conducted a Significance and Enforcement Review Panel (SERP) to review one finding and then settled on a finding beyond that exited or discussed with the licensee. NRC should have conducted another SERP after a re-exit with the proposed finding.

The EP SDP is recognized by all to yield no risk significant findings unless an actual event is in play. It is believed that the confidence in the process would clearly be enhanced by depicting the risk as it is instead of inflating it. Findings do not need to be inflated to get action or to support the safety of the public. By more accurately presenting the risk to the public we would make the process more transparent. The

changes in the color between the initial and final significance determinations are often reflective of this overly conservative approach.

Entergy's experience is that open sharing of information and perspectives and any regulatory bases for findings contributes to public confidence in the process. When information sharing is promoted prior to any entry into the regulatory process of significance determination, we believe that more accurate conclusions can be reached and in a more timely manner. Any need to change the significance of findings is lessened as well.

In the RP area, the NRC has managed to "aggregate" RP findings to increase significance in the RP SDP. This practice is not risk informed and does not support the spirit or intent of the ROP. Each finding should be evaluated in its own right and related to an appropriate risk color. The NRC appears to focus on increasing the significance of issues that represent no actual risk significance. This erodes confidence in the process and is not logical. Additionally, past exposure history (average exposure over time) is used to imply less risk significance for a specific finding if a licensee's exposure has historically been below the pre-selected threshold. This is not risk informed. It is a qualitative measurement with no concrete tie to impact.

On the positive side, Entergy's experience has been that the NRC has been open to feedback during the inspection process in the areas of Security and Fire Protection and has delayed any action until clearly understanding the facts and has recognized errors within the SDP. This is commendable and supports public confidence in the process. The NRC and industry are making changes to the EP, RP and Fire Protection SDPs and at this point those changes will be an improvement. Additional effort should be applied to ensure these SDPs more clearly represent actual risk versus the "perception of risk." Public and industry confidence would be greatly enhanced by any effort in this direction.

(7) Does the NRC take appropriate actions to address performance issues for those licensees outside of the Licensee Response Column of the Action Matrix?

Yes.

(8) Is the information contained in assessment reports relevant, useful, and written in plain English?

Yes. Entergy believes that for the most part information contained in the reports is improved over the past and is useful. We do not believe that issues that lack a clear regulatory basis belong in reports on the docket. For example, findings that are not regulatory issues and are below the violation threshold have no place in a plant safety

assessment and should not be included in the PIM (on the NRC Web). The information is welcomed but can be confusing to the public since they are likely to believe only what they see – that findings are the same as cited or non-cited violations.

Questions Related to the Efficacy of the Overall Reactor Oversight Process (ROP)

(9) Are the ROP oversight activities predictable (i.e., controlled by the process) and objective (i.e., based on supported facts, rather than relying on subjective judgment)?

No. Entergy has experienced unpredictable outcomes in the several areas, including EP and Fire Protection (at RBS and ANO respectively). We observed the plant's approved licensing bases were being "re-examined" and the stations were being evaluated by a new standard of regulatory performance. Issues were exited and later changed or modified. In the case of the RBS EP issue, the NRC seemed pre-disposed to cause a public meeting or proceed without offering any alternative to the licensee. Past practice had been to offer a choice and to discuss any proposed findings to the fullest extent prior to initiating a SERP or rushing to judgment. Too much emphasis seems to be placed on reaching an outcome - timeliness over thoroughness. The ANO Fire Protection issue is still not resolved and has consumed much of 2002. Multiple meetings have been held and still the NRC has not been able to reach a conclusion. If changes to licensing bases are needed, the NRC has a process to do that.

(10) Is the ROP risk-informed, in that the NRC's actions are graduated on the basis of increased significance?

Yes.

(11) Is the ROP understandable and are the processes, procedures and products clear and written in plain English?

Yes.

(12) Does the ROP provide adequate assurance that plants are being operated and maintained safely?

Yes. (See also the response to item number 1)

(13) Does the ROP improve the efficiency, effectiveness, and realism of the regulatory process?

Yes. (See also the response to item numbers 6 and 9) The process is now much more structured and rigorous than the previous process. However, if risk is to be used to

determine significance, then it should not be subjectively dismissed as in the case of RP, and EP. Confidence is instilled when the process is scrutable and logical. To allow the SDP to be overly conservative does not support responsible oversight. In fact, communicating overly conservative outcomes that are later rescinded or reduced in significance tends to make the ROP appear inconsistent, illogical, and inscrutable.

(14) Does the ROP enhance public confidence?

(See the response to item numbers 6, 9, and 13) While this question is not appropriate for Entergy to answer, some observations are provided. We would suggest that a preliminary finding that is later reduced to a lesser significant finding could potentially confuse the public. The same may also be true of findings that are published on the NRC Web and by being there, appear to be the equivalent of a violation.

(15) Has the public been afforded adequate opportunity to participate in the ROP and to provide inputs and comments?

While this question is not appropriate for Entergy to answer, some observations are provided. We believe that the public must be provided the opportunity to participate in the program – to provide comments and to see results. Public perceptions and concerns should not be a factor in the significance determination, evaluation and resolution of regulatory issues at a plant. Interactions in these areas should be between the licensee and the NRC.

We believe that more effort to gauge the actual general public perception or opinion should be expended prior to responding to special interest or public action groups. We believe that quite often, these groups are not representative of the public in general.

(16) Has the NRC been responsive to public inputs and comments on the ROP?

This question is not appropriate for Entergy to answer.

(17) Has the NRC implemented the ROP as defined by program documents?

No. (See the response to item numbers 6, 9, 13 and 14)

(18) Does the ROP reduce unnecessary regulatory burden on licensees?

Yes. For the most part burden is reduced especially when dealing with Level IV violations. Additional burden reduction could be realized if there were less overlap between inspections and PIs (see the response to item 2).

However, additional licensee effort is required to support risk assessments. The NRC's Phase II SDP is ineffective at screening many items, making Phase III analysis more common. If Phase II screening cannot be improved, the industry and the NRC would be better off without the Phase II process.

(19) Does the ROP result in unintended consequences?

Yes. (See the response to item numbers 6, 9, 13, and 14)

(20) Please provide any additional information or comments on other program areas related to the Reactor Oversight Process.

Inspector Knowledge and Use of the Process:

Regional based, DRS inspectors have been highly knowledgeable of the process. Additionally, the inspectors have characterized issues by providing a discussion at debriefs and exits depicting how the issues were evaluated and their conclusions. This observation generally applies to the resident inspectors as well. However, the residents are not as familiar with the process as they should be prior to reporting to a site. The NRC should invest in more practical training (theory to practice).

SERP Process:

The NRC did not provide any insight into the SERP process until late into 2002. The workings and expectations for this important process were not scrutable by the public or licensee. Entergy believes that these results should be published in the public arena. Providing the results in a report format, including the qualifications and positions of those conducting the SERP, would help address public and licensee concerns regarding the purpose, objective and conduct of these important venues.

The SERP process as now described appears to be much improved over what happened prior to its "unveiling".