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From: "Dave Lochbaum" <dlochbaum@ucsusa.org>
To: <nrcrep@nrc.gov>
Date: Fri, Dec 10, 2004 8:08 AM
Subject: UCS comments on NRC's reactor oversight process

Good Morning:

Attached please find supplemental comments by the Union of Concerned Scientists about the reactor oversight process in response to the notice published in the Federal Register.

UCS initially responded to the solicitation for comments on November 8th. At that time, we were unable to provide substantive comments because the NRC had denied the public access to records in its Public Document Room. Limited access was finally restored on December 7th, allowing UCS to complete our review of and comment on the reactor oversight process.

UCS has commented on the reactor oversight process each and every year the NRC solicited comments. To date, we find no evidence that the NRC considered these comments in any way whatsoever. In an effort to provide our comments in a format that can be processed by the NRC, we've adopted the color-coded concept used by the reactor oversight process itself.

Thanks,

Dave Lochbaum
Nuclear Safety Engineer
Union of Concerned Scientists
1707 H Street NW Suite 600
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E-RIDS=ADM-03

SISP Review Complete

Add=S. Sanders (SXS5)

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Subject: UCS comments on NRC's reactor oversight process
Creation Date: Fri, Dec 10, 2004 8:09 AM
From: "Dave Lochbaum" <dlochbaum@ucsusa.org>

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Priority:	Standard
Reply Requested:	No
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Security:	Standard

Union of Concerned Scientists

Citizens and Scientists for Environmental Solutions

December 10, 2004

Michael T. Lesar
Chief, Rules and Directives Branch
Office of Administration (Mail Stop T-6D59)
United States Nuclear Regulatory Commission
Washington, DC 20555-0001

SUBJECT: SUPPLEMENTAL SOLICITED COMMENTS ON THE REACTOR OVERSIGHT PROCESS

Dear Mr. Lesar:

By letter dated November 8, 2004, I provided comments on behalf of the Union of Concerned Scientists to the notice published by the Nuclear Regulatory Commission in the *Federal Register* (Vol. 69, No. 210, pp. 63411-63413) soliciting comments on the reactor oversight process (ROP). At that time, it was impossible to provide meaningful, substantive comments because the NRC had plugged the plug on public access to records within the Agencywide Document Access and Management System (ADAMS) on October 25, 2004. I did convey our intention to provide comments on the reactor oversight process within 30 days after the NRC ended this injustice. The NRC restored limited public access to ADAMS on December 7, 2004. I hereby supplement the original comments as promised.

I have commented on the reactor oversight process each and every year since its inception (and often in-between the NRC's annual solicitations). Many of these comments are repetitive and I apologize for the duplications within these supplemental comments. The reason I keep submitting the comments again and again and again is because I see no signs whatsoever that the NRC considers the comments. I do not get a response from the NRC and do not see my comments addressed by the NRC in any publicly available document. Thus, I have no clue if the NRC agrees with, disagrees with, does not understand, or even bothered to read my comments. Until I find some reason to believe that the NRC considered our comments, I will keep submitting them.

To help end this stalemate, I decided to annotate my comments this time with color-coded ratings. These colors were assigned using a Significance Determination Process for NRC performance in each of the reactor oversight process areas. A Green rating was assigned when NRC performance was judged acceptable. A White (1) rating was assigned when NRC performance needs improvement. A Yellow (1) rating was assigned when NRC performance needs lots of improvement. A Red (1) rating was given when NRC performance was unacceptable. And a U rating was assigned when NRC performance didn't matter to us and when insufficient information exists publicly to rate performance.

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If this approach fails to yield a communication breakthrough with the NRC staff, next year we may arrange our comments in columns with the more significant comments over in the third and fourth columns and the less significant comments over in the first and second columns to emulate the NRC s Action Matrix. If that ruse fails, we also have plans to submit the comments on paper with a letterhead similar to (but distinct enough to avoid copyright infringement charges) that of the Nuclear Energy Institute. We lack confidence that any of these approaches will succeed, but at least it makes submitting the same comments over and over again a little more engaging for us. After all, we expend considerable effort researching the matter and documenting our findings and need something to assuage our complete and utter frustration at the NRC staff s aversion to considering our comments.

Sincerely,

David Lochbaum
Nuclear Safety Engineer
Washington Office

Enclosure: As stated

Union of Concerned Scientists
Citizens and Scientists for Environmental Solutions

Supplemental Solicited Comments on the Reactor Oversight Process

(1) Does the Performance Indicator Program promote plant safety?

Not really, but it sure is colorful.

The performance indicators (PIs) originally promoted safety, but the industry has figured out how to "game" them and render the whole process a regulatory joke.

The PI Summary on the NRC website[1] shows four (4) PIs colored gray with a "T" in the box and a total of six (6) PIs that are colored white, yellow, and red. The "T" boxes mean that the "thresholds are under development." *Under development?* The reactor oversight process is mature. *Under development?* Thresholds were developed years ago. *Under development?* None of the plants with the "T" boxes was built or significantly modified in recent years. *Under development?* There's no legitimate reason for these facilities not to have PI thresholds.

But plant owners can, and do, avoid white, yellow, or red PIs by asking the NRC questions about the thresholds. Not surprisingly, these questions are not asked when a facility is operating firmly in the green but "suddenly" arise when conditions degrade and PIs might go white, yellow, or red. The NRC plays the game and assigns "T" to the boxes while the questions are being answered. There are nearly as many PIs in NRC limbo-land because the owners asked some silly questions as there are PIs colored white, yellow, or red. That's unacceptable. The plant owners must not be able to hijack the PIs by posing silly questions to the NRC. There must be zero (0) "T" boxes in the performance indicator summaries. If any thresholds have to be developed, let them be developed in parallel with the existing thresholds to replace them when the development is completed.

Plant owners found other ways of undermining the performance indicators.

FirstEnergy "gamed" the Alert and Notification System PI to avoid a White color. When the emergency sirens failed to sound during a monthly test, FirstEnergy improperly increased the testing frequency so as to throw in sufficient "passes" to mask the failures and keep the PI green. That's unacceptable performance.

PSEG "gamed" the Unplanned Power Changes PI to avoid a White, or perhaps even a Yellow, color. The repeatedly reduced the power level of their Salem Unit 1 reactor down to just a tad above 80 percent power to avoid the >20 percent power change trigger for this PI. The PI is intended to count power changes caused by recurring equipment problems with inadequate resolutions. Salem Unit 1 definitely fit that bill, but PSEG kept the PI green via "gaming." That's unacceptable performance.

[1] As of December 1, 2004, on http://www.nrc.gov/NRR/OVERSIGHT/ASSESS/pi_summary.html

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There s a longstanding disconnect between PIs such as Unplanned Power Changes and the NRC s Notice of Enforcement Discretion (NOED) policy. If two plants with equivalent technical specification limiting conditions for operation (LCOs) encounter an equipment problem and Plant X shuts down within the LCO time while Plant Y obtains an NOED from the NRC to continue operating with the equipment problem beyond the LCO period, the PIs would record an event for Plant X but not for Plant Y. This is inequitable and just plain wrong. When the NRC issues an NOED, a condition of that approval should be that counts are applied toward applicable PIs.[2]

The new Mitigating System Performance Indicator (MSPI) is awesome. It requires more number-crunching to provide less information than any other mathematical equation in history. Why grown-ups would expend so much time and energy on the MSPI is baffling to UCS. And we refuse to expend any more time and energy trying to figure out why so much time and energy is being wasted on MSPI-mouse.

UCS rating for the ROP in this area: Yellow (1)

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

Technically, yes. The inspection program provides useful insights on safety issues and the performance indicator program provides useless insights. The overlap is use.

The NRC should seriously consider dropping the regulatory charade that is the performance indicator program and instead devote ALL of those full-time equivalents (FTEs) to inspections at operating power reactors.

UCS rating for the ROP in this area: White (1)

(3) Is the reporting of PI data efficient?

Nope. Since the PI data is currently useless, its reporting cannot possibly be efficient.

UCS rating for the ROP in this area: White (1)

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

Apparently not since FirstEnergy was unable to follow the guidance and properly report the Alert and Notification System performance indicator to the NRC. Or, maybe it is clear enough and FirstEnergy deliberately faked its submittal. In that case, the guidance in NEI 99-02 about not faking PIs is apparently too vague or understated.

UCS rating for the ROP in this area: U

[2] UCS quickly notes that counts would not be necessary for cases where NOEDs are approved and issued but the underlying equipment problems are corrected before the LCO durations expire.

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

Yes. The usefulness of the inspection reports has been high since the onset of the reactor oversight process and has only improved over time. The inspection reports do a fine job of describing what was examined and what was found. It is rare that my review of an inspection report raises more questions than it answers. Prior to the reactor oversight process, my review of inspection reports often prompted the need to contact the NRC for clarifying or additional information. That need rarely happens any more. When it does occur, it s my opinion that my questions reflect a special interest in the subject rather than indicate a deficiency in the information provided in the reports.

The inspection reports frequently contain the final answer to questions raised in other forums. For example, a Daily Event Report in late summer 2004 discussed cracking of the coating protecting the berm around the Condensate Storage Tank at the Limerick Generating Station. I contacted the Senior Resident Inspector at the facility for additional information. The Senior Resident Inspector answered my question and referred me to a recently issued inspection report that covered the matter in considerable detail. This example is by no means an isolated case and that fact is my evidence that inspection reports are very useful. That inspection reports are far more frequently the end points instead of the starting points for question threads is, to me, also highly suggestive of their usefulness.

I can suggest only two things to improve the usefulness of the inspection reports. The report numbering scheme is cumbersome. For example, NRC Inspection Report 05000440/2003010 dated January 20, 2004, documents an inspection at the Perry Nuclear Power Plant. The Summary of Findings highlights the key issues discussed in the report. The first finding is summarized and Section 4OA2 is cited as containing additional information. Finding Section 4OA2 in the report becomes a challenge. Look at page 18 of the report, a typically formatted page within the report. It starts out at the top with b. Findings followed by .3 Radiation Protection Technician Instrument Use. You have to flip back two pages to page 16 to see that the .3 in question is a subsection of Section 2OS3, Radiation Monitoring Instrumentation and Protective Equipment. Finding this reference point, I know that I now need to flip towards the back of the report to hopefully locate Section 4OA2. Flipping down to page 23, I see .2 Annual Sample Review at the top with no clue on the page as to what Section this subsection belongs to. Moving backwards to page 22, I find it s part of Section 4OA2. The NRC inspection reports should be reformatted so that section numbering is more useful to the reader. Each page of the report should provide some clue to the reader as to the section.

The other suggested improvement for inspection reports would be to expand the inclusion of diagrams, when appropriate. A good example of such an inclusion is NRC Inspection Report 05000528/2004012 dated July 16, 2004, for the Palo Verde grid event. Attachment 7 to this inspection report is an offsite power electrical diagram. This graphic makes the discussion in the report much easily to follow and comprehend. When inspection reports describe in detail a condition involving numerous components, a simplified graphic should be used.

UCS rating for the ROP in this area: Green Green

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

Nope. The SDP yields less and less equivalent results with each revision to the reactor oversight process. The problem seems to come from how one views "issues of similar significance." The reactor oversight process was developed to measure licensee performance. In its original incarnation, the reactor oversight process did a fairly good job of evaluating licensee performance fairly in areas that were "apples and oranges" from a core damage frequency perspective. For example, it originally did a fairly good job of assigning equivalent colors to similarly good, or bad, licensee performance in mitigating systems and in occupational exposure areas. Poor licensee performance that allowed degraded plant conditions to elevate the chances of core damage properly received a color comparable to that color assigned to poor licensee performance that allowed workers to be exposed to elevated levels of radiation.

But heavy, and misguided, industry pressure over the years since the reactor oversight process was launched have bent and twisted it to near uselessness. For example, the emergency exercise SDP is now comical. A licensee can, and sadly has, fared very badly on a graded emergency exercise only to have that dismal performance dissipated by the unwarranted – and just plain stupid – reason that the breakdown occurred during a test vice an actual emergency.[3] That's lame and allowed to proceed to the extreme will result in only two colors – Green and Red. The colors should be changed to skunk-like Black and White because this practice stinks.

The reactor oversight process and its SDP were supposed to evaluate licensee performance. If the grading system is so perverted that it renders virtually all miscues and foibles Green when they don't involve a core meltdown and Red if they do, then the reactor oversight process is no more insightful than a radiation detector mounted on the perimeter fence. The reactor oversight process needs to be more discerning so that all reasonable regulatory actions are taken to prevent those radiation detectors from ever being used to monitor actual accidents.

The reactor oversight process needs to return to its roots of providing insightful evaluations of licensee performance. Since September 1984, more than two dozen U.S. nuclear power reactors have been shut down for a year or longer while licensee performance problems were corrected. The reactor oversight process must provide early detection and warning of declining performance so it can be corrected before year-plus outages are necessary – or worse, before it triggers a nuclear catastrophe. The reactor oversight process cannot achieve this goal by downplaying bad licensee performance simply because it didn't result in disaster. "No blood, no foul" is the wrong regulatory approach to take and the NRC must abandon it ASAP.

UCS rating for the ROP in this area: Yellow (1)

(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, but with a qualifier.

When a facility wandered out of the Licensee Response Column of the Action Matrix, the NRC took the prescribed steps in response.

[3] UCS notes that the biennial exercises are supposed to emulate real emergencies except, apparently, when it comes to evaluating poor licensee performance during the real emergencies. Hogwash!

But the NRC needs to take more appropriate actions to address performance issues detected at a facility but not quite rising to the level where a move out of the Licensee Response Column occurs. Specifically, these situations arise when the NRC detects a substantive cross-cutting performance issue at a facility. In UCS s view, an alternative to the cross-cutting issue would be to issue greater-than-green inspection findings that easily could move a facility out of the Licensee Response Column. UCS is not contesting or disputing the NRC s use of cross-cutting issues, but we feel that more appropriate actions are necessary by the NRC at these times to ensure that the desired, intended performance improvement results.

We cite the NRC s actions to address the cross-cutting performance issue in the safety conscious work environment (SCWE) at Hope Creek/ Salem as a suitable model. In the mid-cycle assessment letter,[4] the NRC staff identified SCWE as a cross-cutting issue. The NRC staff went on to list five specific regulatory actions it was going to take about SCWE at Hope Creek/Salem. This is a welcome departure from how the NRC typically handles cross-cutting issues. In those other cases, the NRC s assessment letters would inform licensees about the cross-cutting issues (most often in the corrective action area) and the reasons for the NRC s identification. The NRC stopped short of detailing what actions it intended to take about the cross-cutting issues.

When the NRC identifies a substantive cross-cutting performance issue in an assessment letter, the NRC must also clearly delineate the actions it will take regarding that issue. Simply citing cross-cutting performance issues in assessment letter after assessment letter is totally improper regulatory response.

UCS rating for the ROP in this area: **White (1)**

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

Nope. Unlike the inspection reports that contain relevant and useful information written in plain English, the assessment reports contain irrelevant and useless information written in plain English.

The inspection reports and assessment reports are both written using a formal process designed to promote conformity in the products generated. As detailed in the response to Question (5) above, the inspection reports provide relevant, useful information about what was looked at and what was found. The conformity as applied to the inspection reports causes them to look the same, but not to say the same things.

Excessive conformity renders the assessment reports garbage. They now all say virtually the exact same thing nothing. If you compare the mid-cycle assessment report for the best performing plant in the country to the mid-cycle assessment report for the worst performing plant in the country, you ll see that the difference is a mere handful of words. The assessment reports should clearly explain why the NRC believes the end-point plants are at their respective end-points and why the NRC believes the remaining plants are in between.

UCS has tried very hard over the years to figure out what the assessment reports are saying. They tell us nothing about what has happened in the past and give us little clue about what NRC

[4] Letter dated August 30, 2004, from Samuel J. Collins, Regional Administrator, Nuclear Regulatory Commission, to A. Christopher Bakken, President and Chief Nuclear Officer, PSEG Nuclear LLC, Mid-Cycle Performance Review and Inspection Plan Hope Creek Nuclear Generating Station.

intends for the future. There is little difference between NRC assessment reports and blank pages in terms of informational value.

The assessment reports need to become as relevant and useful as are the inspection reports.[5]

UCS rating for the ROP in this area: Yellow (1)

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

I guess so.

UCS rating for the ROP in this area: U

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

No, but the fault is the silly SDP used to determine graduation. The ROP is set up to provide commensurate NRC responses if it wasn t for the wrong answers coming out of the SDPs. If the SDPs were fixed, the NRC s responses under the ROP would be more commensurate with the significance of the performance deficiencies.

UCS rating for the ROP in this area: U (the problem lies elsewhere and UCS did not feel it fair to assign a second greater-than-green rating for the same root cause)

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

Si.

UCS rating for the ROP in this area: Green

(12) Does the ROP provide adequate regulatory assurance when combined with other NRC regulatory processes that plants are being operated and maintained safely?

No. Davis-Besse and Hope Creek/Salem prove this point beyond even the shadow of a doubt.

The NRC s own Lessons Learned Task Force (LLTF) following the Davis-Besse debacle made 51 recommendations on things the NRC could do to prevent recurrence of this regulatory breakdown. The Commission approved 49 of the recommendations. But many of these known weaknesses and faults in the NRC regulatory processes remain uncorrected today. The answer to this question cannot be Yes when these known deficiencies exist. After all, these deficiencies allowed Davis-Besse to be operated and maintained with inadequate safety levels.

In addition, the ROP missed serious problems at Hope Creek/Salem. The Institute for Nuclear Power Operations (INPO) had dropped its rating for the site to 3 while the ROP tracked

[5] UCS observes that the August 30, 2004, mid-cycle assessment letters sent by the NRC to the Hope Creek and Salem licensees are the exception they alone have been useful from among all the prior assessment letters.

performance largely as Green, particularly for Hope Creek. In early 2004, the Utility Services Alliance (USA) company rated performance at Hope Creek/Salem as less than competent in 73 of 92 areas. The NRC s assessment of conditions at Hope Creek/Salem were disparate from the assessments by INPO and USA. This grade inflation by the NRC allowed the Hope Creek/Salem plants to operate too long with unacceptable safety levels.

There is some good news to temper these reports. In mid 2004, the NRC identified safety conscious work environment problems at Hope Creek/Salem as cross-cutting issues. The ROP was revised to allow the NRC to identify safety culture problems sooner and intervene earlier when potential warning signs are detected. This is a very positive step.

UCS rating for the ROP in this area: Yellow (1) (it would have been Red (1) but the safety culture revision to the ROP was credited as ample evidence of improvement in this area)

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

Yes, but the NRC s Systematic Assessment of Licensee Performance that it replaced was so inefficient, ineffective, and unreal that it would be virtually impossible for the ROP not to show improvement in these areas.

UCS rating for the ROP in this area: Green

(14) Does the ROP ensure openness in the regulatory process?

Less now than in past years. The Commission s lack of discernible interest in the Davis-Besse matter, the closed-door efforts for the Davis-Besse Lessons Learned Task Force recommendation resolutions, and the unfortunate events of August 4, 2004, illustrate this position.

By the NRC staff s own admission, the Davis-Besse reactor head degradation was one of the most risk significant events in the history of nuclear power in the United States. Yet the Commission conducted a grand total of one (1) briefing in public with the 0350 Panel. During that same time period, the Commission held many more public briefings on burden reduction and industry initiatives. The Commission should at least pretend to show interest in safety. In addition, the Commission s lack of interest did a tremendous disservice to the NRC staff working on and supporting the 0350 Panel. Many NRC staff members devoted considerable time inspecting Davis-Besse and ensuring that the facility was ready for restart in March 2003. Both the public and the NRC staff deserved to see the Commission take an interest in this matter. The Commission has zero excuse for ducking this issue.

The ROP was developed via a very open, accessible process. Since its adoption, the ROP has featured monthly public meetings between NRC staff and public stakeholders to discuss ROP implementation details and proposed revisions. The NRC s Davis-Besse Lessons Learned Task Force (LLTF) recommended 51 revisions to NRC regulatory processes to prevent recurrence. Many of these recommendations involved or affected the inspection, assessment, and enforcement components of the reactor oversight process. Therefore, it was UCS s expectation that the monthly public ROP meetings would be forums for discussing proposed changes to resolve the LLTF recommendations. That was not the case. With the notable and commendable exception of the proposed changes to address the LLTF recommendation about Operating Experience Reviews, the LLTF recommendations have been resolved behind closed doors, even

those with direct impact on the ROP s inspection, assessment, and enforcement modules.[6] The NRC should have used its established, public process for implementing LLTF recommendations impacting the ROP. The NRC opted not to do so and therefore cannot receive high grades for openness.

On August 4, 2004, the NRC announced that it was removing security-related information from the ROP. The NRC failed to explain the reason for this removal. When the ROP was created, there were extensive discussions over what security-related information could be provided within the ROP. After the tragic events of 09/11, the NRC pulled the ROP from the public arena and then returned it after a careful review with regard to that security-related information that could be made publicly available. These two NRC deliberations determined that the security-related information provided in the ROP could not be exploited by our enemies.

For some unexplained reason, the NRC reversed these decisions and yanked the security-related information from the ROP. When asked about this reversal, all that the NRC would say is that the yank followed a long, careful consideration of the balance between the public s need to know and the need to protect the facilities.

But the two prior NRC decisions were not rushes to judgment. The two prior NRC decisions also balanced need to know with the need to say no. The public deserved more from the NRC about the basis for its decision to yank security-related information from the ROP nearly three years after 09/11 than the mealy-mouthed, lame, trite excuses.

The NRC cannot claim that the regulatory process is open when it refuses to provide straight-forward, frank reasons for its actions. The NRC should be ashamed of its performance on August 4, 2004.

UCS rating for the ROP in this area: Red(-)

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

Not quite. While UCS had adequate opportunity to participate in the ROP via processes like the session at the Regulatory Information Conference and the monthly ROP public meetings conducted at NRC headquarters, we heard from many people across the country about their problems engaging the NRC about the ROP. Thus, UCS must conclude that the public has not been afforded adequate opportunity to participate due to this inconsistency.

The recurring theme heard by UCS from members of the public was that the annual assessment meetings conducted by the NRC in reactor communities were their foremost opportunity to participate in the ROP, but that problems prevented these opportunities from being productive. Seeking to understand this area better, I attended one of the annual assessment meetings and talked with NRC staff and public stakeholders about several other meetings. In addition, I reviewed the NRC presentation slides prepared for many of the annual assessment meetings. My comments from the meeting I attended, the discussions I had, and the documents I reviewed:

[6] The NRC may be taking credit for its Planning, Budgeting, and Performance Management (PBPM) process for overseeing the resource reallocations required to implement the Davis-Besse LLTF recommendations. While the NRC s PBPM process is a very good management tool, it is an internal tool that provides negligible information to external stakeholders, even in hindsight.

a. The NRC presentation slides do a commendable job of explaining the assessment for the specific site and where that assessment stands in context of overall fleet performance. For example, the slides for the presentation by NRC Region II for the Watts Bar annual assessment (ML04100242) provide insights on the NRC staff responsible for monitoring performance (slide 4), how the elements of the reactor oversight process fit together (slide 6), levels of inspection effort expended within the reactor oversight process (slide 7), the overall breakdown of performance indicator and inspection findings in 2003 (slide 9), and sources for additional information (slides 18 and 19). NRC Region IV supplemented that commendable model with information on the NRC s response to security threats and also with very good information on bulletins issued by the NRC in the past year (ML042120487).

   To enhance the utility of the NRC presentation slides developed for the annual assessment meetings, UCS recommends that the NRC make these documents accessible from the reactor oversight process webpages. For example, the NRC uses http://www.nrc.gov/NRR/OVERSIGHT/ASSESS/FERM2/ferm2_chart.html to post information for the Fermi Unit 2 reactor. At the top of this webpage (and at the bottom of the webpages for the other operating reactors) is a section titled Additional Inspection & Assessment Information. UCS recommends that the NRC staff make the annual assessment presentation slides accessible from this section of the reactor webpages.

b. The NRC staff made great progress this past year alerting people in the communities about the upcoming annual assessment meetings. For example, NRC Region I sent out at least thirty three (33) invitations to individuals for the Three Mile Island Unit 1 annual assessment meeting (ML041260093).

c. The NRC staff struggles with anticipating the topics of interest to the public attending the annual assessment meetings and therefore whom to bring to address those topics.

d. The public struggles with non-responses to their questions raised at the annual assessment meetings.

UCS concludes that both the NRC staff and the public enter the annual assessment meetings in good faith, but that communication barriers exist that undermine the utility of these meetings. To lessen the communication barriers, UCS recommends the following revisions to the annual assessment meeting process:

1) Concurrent with the public release of the meeting notice for each annual assessment meeting, the NRC should post the presentation slides to the NRC website and reference that URL in the meeting notice. This provides members of the public the opportunity to review the presentation materials prior to the meeting and thus engage the NRC staff during the meeting at a more informed level.

2) The meeting notice for each annual assessment meeting should encourage members of the public to provide the NRC with questions and/or topics of interest in advance of the meeting. The meeting notice should explain the purpose for this measure is to allow the NRC to bring the appropriate staff members to the meeting to address those issues.

3) During each annual assessment meeting, the NRC staff should clearly communicate its preferred point-of-contact for members of the public for additional and follow-up questions.

A related issue for the annual assessment meetings is attendance, particularly low public attendance at many of the sites. UCS recommends that the NRC consider the option of conducting regional annual assessment meetings in selected locales. For example, the Limerick, Peach Bottom, and Salem/Hope Creek sites are fairly close together as are the Catawba, Summer, and McGuire sites. In selected cases like these, it might be prudent for the NRC to conduct the annual assessment meeting for all sites within that region near one site and rotate the location such that all sites periodically host the annual assessment meeting.

In addition, UCS re-recommends that the NRC consider having the annual Commission briefing on the reactor oversight process rotate between its four Regions. The Commission convening this annual briefing in Atlanta, or Lisle, or King of Prussia, or Arlington would likely attract far more local public and media attention than is drawn to this meeting in Rockville. I understand that no news is good news, but good news is better news and these road shows would provide the NRC with ample opportunities for presenting good news. Even when the road show is to the Region with the worst plant (e.g., a Commission briefing on the reactor oversight process in Region III in 2003 with Davis-Besse in the middle of its problems), it would provide an opportunity to place that situation in context and better illustrate the performance levels the NRC could expect once the specific problems were corrected.

UCS rating for the ROP in this area: **White (1)**

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

Not only no, but Heck No. Unlike the Frequently Asked Question (FAQ) process the NRC uses to respond to industry inputs and comments, there s no discernible response from the NRC to public inputs and comments. If the public accidentally delivered its comments to the National Zoo instead of the NRC (not so far-fetched given that both are destinations along Metro s Red Line), the NRC response would seemingly be the same none.

UCS was particularly incensed by the NRC staff s galling statements in SECY-04-0053:[7]

> *The two most troubling aspects of the survey results are the anonymous NRC employee submission and the perceived lack of NRC response to comments. ... Additionally, a common theme in many responses was the apparent lack of NRC response to comments. Many of those surveyed believe the NRC has ignored their previous comments or, at the very least, been slow to act, and that the respondent has no way to obtain feedback or responses from the NRC.*
>
> *The staff was surprised by both of these issues. ... The staff believes that there is a distinct difference between being unresponsive and not adopting all recommended improvements to the program. The staff must carefully consider the appropriate balance between all stakeholder points of view and the goals of the ROP when considering any significant changes to the process. The staff will continue to acknowledge each FRN*

[7] Memo dated April 6, 2004, from William D. Travers, Executive Director for Operations, Nuclear Regulatory Commission, to Commissioners, Reactor Oversight Process Self-Assessment for Calendar Year 2003, Attachment 4, Communication Activities.

response, indicating the staff's plans to address the comments in this SECY paper as appropriate. However, the staff does not have the resources to provide a direct reply to each FRN response detailing how it handled the respondent's specific comments.

First, how can the staff possibly be surprised by the 'lack of response' charge when it repeatedly hears the same comments (e.g, the "common theme") from many stakeholders spanning several years? The staff must be suffering from Group Attention Deficient Disorder (GADD).

Second, UCS has trouble understanding how the staff can lack the resources to provide direct replies yet have the resources to review the same comments year after year. UCS suggests the NRC staff try responding this year and see if the hours saved NOT reviewing repetitive comments next year more than exceeds the puny number of hours actually responding to comments this year. As the old ad went, "try it, you might like it."

Third, as demonstrated by my citation of the passages above from SECY-04-0053, I and other external stakeholders are in fact diligently reading the staff's publicly available documents on the reactor oversight process. We diligently seek to find out how the NRC staff considered our comments. But we cannot find evidence that the staff considered our input when achieving the "appropriate balance between all stakeholder points of view."

UCS does not insist that the NRC staff expend the time and effort to individually respond to us with its comment-by-comment reaction to our input. We would welcome that treatment (since the NRC staff sees fit to address comments from industry via its Frequently Asked Question process), but do not require it. If the NRC staff instead opts to respond to external stakeholder comments generically through vehicles such as the annual SECY on the reactor oversight process assessment, then the NRC staff has the obligation to provide sufficient information in those publicly available documents to allow the trail from public comment to NRC staff consideration to NRC staff decision. The fact that so many external stakeholders – not just UCS – continues to make the same comments year after year is *prima facie* evidence that the NRC staff is not properly responding to public comments, either individually or collectively.

UCS and other public stakeholders have provided comments since the reactor oversight process was developed – often the very same comments year after year – without any indication that the NRC agreed with, disagreed with, did not understand, or had even bothered to read them. To be fair, perhaps UCS will check with the National Zoo to see if they've received a bunch of public comments about the reactor oversight process.

UCS rating for the ROP in this area: Red (1) (only 'cause lower ratings are unavailable)

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

Not entirely. In the past year, several NRC inspectors and NRC contractors contacted me with complaints about NRC inspections. The most disturbing complaints involved NRC inspection team leaders instructing the inspectors and contractors on the teams that they were not to find any thing at the facilities. I have also heard numerous complaints from several inspectors/contractors that NRC team leaders are burying significant findings. It makes little sense to send inspectors out with directions to close their eyes and to turn deaf ears upon their voiced concerns. The ROP inspection procedures may look good on paper, but they are not being faithfully followed.

UCS rating for the ROP in this area: Red (1)

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

Don t know, don t care.

UCS rating for the ROP in this area: U

(19) Does the ROP minimize unintended consequences?

Insufficient data to analyze.

UCS rating for the ROP in this area: U

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

(a) The reactor oversight process s self-assessments continue to be commendable. For example, the NRC e-mail dated January 16, 2004 (ML042380284), described an upcoming peer review of two NRC Region II inspection reports against the guidance contained in program document Manual Chapter 0612. Combined with many similar efforts, these self-assessments promote consistency and efficiency.

UCS rating for the ROP in this area: Green -plus

(b) For some reason, the NRC did not ask any specific questions about the enforcement component of the reactor oversight process. The enforcement component is very bad. It is simply unacceptable and inexcusable that the NRC has taken no enforcement action against FirstEnergy or any individuals for the incomplete and inaccurate information provided to the NRC in fall of 2001 about the condition of the reactor vessel head at Davis-Besse. The NRC can continue to point fingers at DOJ and shrug its shoulders that it s out of their control, but that s a lie. The NRC has the power to sanction FirstEnergy and individuals but sheepishly chooses not to do so. The NRC s impotent enforcement stance is inexcusable and must be corrected ASAP.

UCS rating for the ROP in this area: Red(0)

(c) I have frequently commended the NRC s Industry Trends Program (ITP). The ITP has produced many charts of various parameters doing various things over various periods of time. I confess that the geek in me was bedazzled by the data plots and the associated linear regression.

The charts and graphs this year are as impressive as past years, but their luster has faded. I can find no evidence to suggest that the NRC changed its course because of the ITP math or stayed its course because of the ITP math. In other words, there s no evidence I can find that the NRC would have done anything different at any time had the ITP never existed. If the ITP s output neither shapes nor informs the NRC s regulatory decisions, my question is why bother?

If the NRC had recruited a troupe of mimes and jugglers and stationed them outside their One White Flint North offices, their performances would undoubtedly have captured by attention

as I walked to and from the NRC building. Does the ITP provide any more regulatory valve than the hypothetical band of street performers? I would like to think that it does, but I know of no such evidence. If the NRC is as unable to show the value-added from the ITP s charts and graphs as I am, I d recommend discontinuing the effort and reallocating the resources to other activities.

UCS rating for the ROP in this area: **White (1)**

(d) The NRC deserves credit for placing much of the reactor oversight program process information and results on its website. But that information is so poorly organized and presented as to make it unusable. When I field calls from citizens living around nuclear plants, reporters, or elected officials staffers, I cannot in good conscience direct them to the reactor oversight process webpage. That would be cruel and unusual punishment to inflict on anyone.

The information about the reactor oversight process is so bizarrely grouped that I almost wear out my computer mouse during frustrating cyber safaris looking for documents I know exist. There seems to be little rhyme or reason to where documents are stashed.

I ve essentially given up on the NRC website as a source of information about the reactor oversight process. Instead of running this gauntlet, I instead opt for finding the information in the NRC s Agencywide Document Access and Management System (ADAMS). ADAMS is equipped with a search engine that allows me to quickly find documents I know to exist. The search engine for the NRC s website is as likely to guide me away from known documents as to them.

The NRC should hire people who can discard the abomination that is the web-based ROP info and replace it with something that people can use.

UCS rating for the ROP in this area: **Yellow (1)**