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*AD13 received
10/26/04*

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RS-04-193

December 17, 2004

U.S. Nuclear Regulatory Commission
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Washington, DC 20555-0001

*11/01/04
69FR63411
(20)*

Subject: Solicitation of Public Comments on the Implementation of the Reactor Oversight Process (ROP)

- References:
- (1) Volume 69, Federal Register No. 210, Pages 63411-63413, dated November 1, 2004
 - (2) Letter from A. R. Pietrangelo (Nuclear Energy Institute) to U. S. NRC, "Solicitation of Public Comments on the Implementation of the Reactor Oversight Process (ROP)," dated December 16, 2004

Exelon Generation Company, LLC (EGC) and AmerGen Energy Company, LLC (AmerGen), appreciate the opportunity to provide comments on the implementation of the ROP as requested by the Nuclear Regulatory Commission (NRC) in the Federal Register on November 1, 2004.

The ROP continues to be viewed as a significant improvement over the previous Systematic Assessment of Licensee Performance (SALP) program in that it is objective, safety focused and predictable. This approach, for the most part, provides an objective measurement of performance, avoids unnecessary regulatory burden, and focuses NRC and licensee resources on safety significant issues. Further, the ROP provides a timely and understandable assessment of licensee performance, which leads to an increase in public confidence regarding the nuclear industry.

Over the past year, the ROP has continued to evolve and the program continues to provide more than adequate assurance that nuclear plants are being maintained and operated safely. Since the beginning of the ROP, nuclear plant performance has demonstrated improving performance, which is clearly a positive result of the program.

More work, however, is required to further improve the ROP. Reference 2 provides detailed comments and responses to the questions provided by the NRC. EGC and AmerGen endorse the industry responses provided in Reference 2. There are several issues that need to be highlighted and require increased senior NRC management involvement for resolution. The subsequent paragraphs describe the more significant concerns that need to be addressed.

Over the past three years, the NRC has initiated a significant number of new physical security requirements for nuclear power plants. Many of these requirements were implemented without significant consultation with the industry. The NRC is now developing a revised assessment

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process for the physical protection cornerstone of the ROP, including an overall structure for the process, revised performance indicators (PIs), and revised significance determination processes (SDPs). The original ROP was developed with significant industry collaboration. EGC and AmerGen are concerned that the NRC is developing the revised assessment process for the physical security cornerstone without substantial participation from the industry. Opportunities for participation have been limited to solicitation of stakeholder comments, as opposed to collaborative development. Further, we have not seen indication that the comments provided by industry have been addressed in any substantial manner.

We are particularly concerned about the two proposed SDPs for baseline physical security inspections and force-on-force exercises. We believe that these SDPs have the potential to overstate the relative significance of security findings. The proposed baseline security SDP does not differentiate between programmatic deficiencies and more limited failures to properly implement programs. The force-on-force exercise evaluation process should be modeled after the process by which the NRC evaluates licensees in emergency preparedness exercises, relying on NRC oversight of licensee self-assessment and correction.

In summary, although the implementation of new security requirements without substantial industry participation over the past three years may have been the result of overriding factors, we see no reason to minimize industry participation in the development of the assessment process.

More generally, EGC and AmerGen are concerned with elements of the SDP process beyond the physical security cornerstone. First, because the NRC is not meeting its internal performance measures for timeliness in reaching a final significance determination, the agency has proposed measures that essentially use best available information to expedite this process. While we support the NRC's timeliness goals, we must point out that accuracy of the process is at least as important as timeliness. The ROP process is designed to focus NRC and licensee resources based on safety significance, and thus, the safety significance of findings must be properly characterized. Further, assigning significance based on best available information and then relying on an appeal process to allow for consideration of new information will have a negative affect on public confidence. The industry has asked NRC to host a public workshop to better understand this issue, but this has not occurred. EGC and AmerGen suggest that the NRC and industry work together to evaluate the factors impeding timeliness, and develop solutions that do not sacrifice the accuracy of the final significance determinations.

Further, we are concerned that the process does not, in all cases, yield equivalent results for issues of similar significance in all ROP cornerstones. This was noted in the NRC's 2003 self-assessment of the ROP (SECY 04-0053), and continues to be an issue. Generally speaking, the initiating events, mitigating systems, and barrier integrity cornerstones have been demonstrated to be consistent and implement a risk-informed basis. However, the emergency preparedness and occupational radiation safety cornerstones still contain SDPs with considerable subjectivity. Further, the proposed physical security baseline SDP contains considerable flexibility in application, which will inevitably lead to inconsistent application. We recommend that the NRC review and revise these SDPs, in collaboration with the industry.

As noted previously, nuclear plant performance has demonstrated an improving trend since the beginning of the ROP. Continued improving performance will result in an increasing number of green performance indicators (PI) and inspection findings and a decrease in non-green outcomes. We are concerned that some regional staff continue to view this decrease in non-

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green outcomes as a negative aspect of the ROP. The PIs and inspection program act in a synergistic manner to assess licensee performance and permit appropriate escalation of NRC oversight if performance declines. Changes to the ROP cannot be considered or created simply to increase the number of non-green outcomes.

EGC and AmerGen support the revisions to the ROP currently in progress, including the implementation of the Mitigating Systems Performance Index (MSPI) and revision of indicators for Scrams with Loss of Normal Heat Removal and Reactor Coolant System Leakage. These new and revised indicators will further improve the safety focus and consistent application of the process.

EGC and AmerGen recognize and support the need for further refinements to the ROP and will work to achieve these improvements with NRC, industry, and other stakeholders in a collaborative manner. We believe the ROP is a very effective process for assessing performance and our comments are intended to further reinforce the importance of this program. Should you have any questions, please do not hesitate to contact me.

Sincerely,

for 
Jeffrey A. Benjamin

Vice President
Licensing and Regulatory Affairs

cc: Nuclear Energy Institute – Marv Fertel
Nuclear Energy Institute – Steve Floyd