February 7, 2005

The Honorable George V. Voinovich, Chairman
Subcommittee on Clean Air, Climate Change,
and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Fiscal Year (FY) 2005 Energy and Water Development Appropriations Act, House Reports 108-554 and 108-792, directed the Nuclear Regulatory Commission (NRC) to continue to provide a monthly report on the status of its licensing and regulatory duties. The initial reporting requirement arose in the FY 1999 Energy and Water Development Appropriations Act, Senate Report 105-206. On behalf of the Commission, I am pleased to transmit the seventy-third report, which covers the month of December 2004. I am also providing more recent information in this cover letter in order to keep you fully and currently informed of NRC's licensing and regulatory activities.

The previous report provided information on a number of significant activities including: (1) the issuance of two reports on recent inspections at the Vermont Yankee Nuclear Power Station, one documenting the conclusions of an engineering inspection that was conducted from August 9 through September 3, 2004, and one containing the results of the special inspection to look into spent fuel segments that were reported missing at the facility; (2) restoration of additional non-sensitive documents to the NRC website including documents pertaining to the proposed Louisiana Energy Services (LES) and United States Enrichment Corporation (USEC) Inc. uranium enrichment facilities; and (3) an update on the status of our oversight activities at Public Service Enterprise Group, Nuclear LLC's (PSEG) Hope Creek plant, located in Hancocks Bridge (Salem County), New Jersey.

I would like to update you on the status of our oversight of the Perry Nuclear Power Plant, located in Perry, Ohio, and operated by First Energy Nuclear Operating Company (First Energy). The May 2004 monthly report initially informed you of ongoing NRC concerns regarding the thoroughness of the corrective action program at Perry. Subsequent updates were provided in the July and October 2004 reports. Because of these ongoing concerns, the staff concluded the plant would be subject to increased scrutiny by the NRC under our reactor oversight program. Most recently, on January 10, 2005, we dispatched an eight-person team to the Perry site as the first of a broad three-part inspection to assess First Energy's activities as part of NRC's heightened oversight of the plant. The team is focusing on the utility's corrective action program – how it finds, evaluates, and fixes problems. In addition to the NRC inspectors, there are observers from the State of Ohio and the Canadian Nuclear Safety Commission. This extensive inspection will provide the agency with important insights into plant operations and the effectiveness of First Energy's performance improvement initiatives. The second part of the broad inspection is scheduled for late February or early March, 2005, to review activities during

the plant's refueling outage. The third part of the inspection, planned for April and early May, 2005, will focus on operating procedures, staff and management performance, engineering, and emergency planning. The team will also review the progress of the First Energy performance improvement plan for Perry. An inspection report will be issued about 45 days after the conclusion of each part of the inspection and will be available on NRC's Agencywide Documents Access and Management System (ADAMS) which is accessible via NRC's website (http://www.nrc.gov).

In our monthly report for October 2003 (dated January 21, 2004), we reported that we had amended our regulations on the conduct of hearings to make them more effective, efficient, and understandable to the public. On December 10, 2004, the Federal Court of Appeals for the First Circuit, in a unanimous opinion, upheld those amended regulations against challenges brought by several advocacy groups. The case is published as *CAN, et al., v. NRC*, 391 F.3d 338. The court agreed with our argument that the NRC's new procedures meet the relevant requirements in the Administrative Procedure Act (APA). The court affirmed that the APA does not mandate the trial technique of "discovery," nor grant parties a right to cross-examination. The court also dismissed as "meritless" petitioners' constitutional arguments for more formal procedures. (One of the advocacy groups has petitioned the court for rehearing.)

Recently, the Commission, or in some cases the NRC staff, also accomplished the following:

- published in the Federal Register on January 11, 2005 (70 FR 1905), an Order dated December 30, 2004, revoking the license authorizing the use of nuclear material issued to KTL Roudebush Testing, located in Kansas City, Missouri. In addition, the NRC issued an Order the same day to the owner of KTL Roudebush Testing prohibiting his involvement in all NRC-licensed activities for deliberately violating safety requirements and providing false information to the agency. KTL Roudebush held an NRC license to possess and use radioactive material for radiography, which uses sealed radiation sources to make x-ray like images of heavy metal objects like pumps, valves, and pipes. The Order revoking the license required the company to transfer all NRC-licensed materials to authorized recipients and provide proof that all transferred materials have been leak-tested and securely transferred. The Order prohibiting NRC-licensed activity prohibited Christopher V. Roudebush – the company owner, president and radiation safety officer – from engaging in any NRC-licensed activities for five years from the date of the Order. The order prohibiting NRC-licensed activities also required Christopher V. Roudebush to notify the Director of the Office of Enforcement at the NRC, within 20 days of his acceptance of his first employment offer involving NRC-licensed activities, for a period of five years after the period of prohibition has expired. The licensee had until January 19, 2005, to request a hearing. The licensee did not request a hearing. On January 25, 2005, the licensee submitted a letter to the NRC's Region 3, confirming that all licensed material has been transferred to an approved location.

- scheduled evidentiary hearings for February 7, 2005, on a proposed uranium enrichment plant to be built in Lea County near Eunice, New Mexico. The hearings will be held in Hobbs (Lea County), New Mexico, and conducted by the Nuclear Regulatory Commission's Atomic Safety and Licensing Board (ASLB). The evidentiary hearings will continue daily until concluded. Saturday, February 12, will be set aside for members of

the public to make brief statements. During the hearings, the ASLB will hear evidence on four environmental contentions regarding the proposed National Enrichment Facility to be built by LES. These contentions concern impacts on ground and surface water, water supplies, waste storage and the need for the facility. While these hearings will be open to the public, parts of the sessions regarding each of the contentions may be closed due to discussions that may involve sensitive information.

- published in the Federal Register on January 26, 2005 (70 FR 3591), a final rule amending NRC's emergency planning regulations governing the domestic licensing of production and utilization facilities. The final rule amends the current regulations as they relate to NRC approval of licensee changes to Emergency Action Levels (EALs). The final rule also clarifies exercise requirements for co-located licensees. These amendments are intended to resolve an inconsistency and an ambiguity in current regulations.

- issued a Regulatory Issue Summary (2004-18) on December 1, 2004, that notifies all NRC licensees that package or transport nuclear materials of a change to their quality assurance program renewal period which will extend it from 5 to 10 years. This action will immediately reduce unnecessary regulatory burden to the industry and result in savings in staff effort.

- issued a renewed site-specific license on December 21, 2004, to allow General Electric Company to continue to operate its independent spent fuel storage installation (ISFSI) in Morris, Illinois, through May 2022. The ISFSI provides for the wet storage of spent fuel and was originally licensed in 1982.

Please do not hesitate to contact me if I may provide additional information.

Commissioner Jaczko did not participate in the development of this letter to the extent it deals with the Yucca Mountain project.

Sincerely,

/RA/

Nils J. Diaz

Enclosure:
Monthly Report

cc: Senator Thomas R. Carper

Identical letter sent to:

The Honorable George V. Voinovich, Chairman
Subcommittee on Clean Air, Climate Change,
and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510
cc: Senator Thomas R. Carper

The Honorable Ralph M. Hall, Chairman
Subcommittee on Energy and Air Quality
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515
cc: Representative Rick Boucher

The Honorable Pete V. Domenici, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States Senate
Washington, D.C. 20510
cc: Senator Harry Reid

The Honorable David L. Hobson, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States House of Representatives
Washington, D.C. 20515
cc: Representative Peter Visclosky

The Honorable James M. Inhofe, Chairman
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510
cc: Senator James Jeffords

The Honorable Joe Barton, Chairman
Committee on Energy and Commerce
United States House of Representatives
Washington D.C. 20515
cc: Representative John D. Dingell

MONTHLY STATUS REPORT ON THE LICENSING ACTIVITIES AND REGULATORY DUTIES OF THE UNITED STATES NUCLEAR REGULATORY COMMISSION

DECEMBER 2004

Enclosure

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[1]Note: The period of performance covered by this report includes activities occurring between the first and last day of December 2004. The transmittal letter to Congress accompanying this report may provide more recent information in order to keep Congress fully and currently informed of NRC's licensing and regulatory activities.

I Implementing Risk-Informed Regulations

The staff continues to make progress on tasks involving the use of probabilistic risk information in many areas; however, there were no reportable milestones scheduled or completed during the month of December 2004.

II Revised Reactor Oversight Process

The NRC continues to implement the Reactor Oversight Process (ROP) at all nuclear power plants. The NRC continues to meet with interested stakeholders on a periodic basis to collect feedback on the efficacy of the process and consider the feedback in future ROP refinements. Recent activities include the following:

- On December 7, 2004, NRC staff held a public meeting with the Nuclear Energy Institute (NEI) to discuss issues related to the Construction Inspection Program Information Management System. Topics included the content of licensee inspection, test, analysis, and acceptance criterion/criteria (ITAAC) determination packages and the NRC process for reviewing and closing an ITAAC.

- On December 15, 2004, NRC staff hosted the monthly public meeting on the Mitigating Systems Performance Index (MSPI) and the ROP Working Group. This combined meeting discussed the draft probabilistic risk assessment (PRA) requirements/guidance to be included in the MSPI guidance documents, the upcoming February 2005 industry MSPI workshop, and the remaining scheduled MSPI milestones for the next 12 months. The staff also discussed industry questions on the Maintenance Risk Assessment and Risk Management significance determination process (SDP), status of industry activities on barrier integrity and scrams with loss of normal heat removal performance indicators (PIs), and open and new frequently asked PI questions.

III Status of Issues in the Reactor Generic Issue Program

Resolution of the issues in the Reactor Generic Issue Program continues to be on track in accordance with the schedules previously submitted.

IV Licensing Actions and Other Licensing Tasks

Operating power reactor licensing actions are defined as orders, license amendments, exemptions from regulations, relief from inspection or surveillance requirements, topical reports submitted on a plant-specific basis, notices of enforcement discretion, or other actions requiring NRC review and approval before they can be implemented by licensees. The FY 2005 NRC Performance Plan incorporates three output measures related to licensing actions -- number of licensing action completions per year, age of the licensing action inventory, and size of licensing action inventory.

Other licensing tasks for operating power reactors are defined as licensee responses to NRC requests for information through generic letters or bulletins, NRC responses to 2.206 petitions, NRC review of generic topical reports, responses by the Office of Nuclear Reactor Regulation to regional requests for assistance, NRC review of licensee 10 CFR 50.59 analyses and FSAR

updates, or other licensee requests not requiring NRC review and approval before they can be implemented by licensees. The FY 2005 NRC Performance Plan incorporates one output measure related to other licensing tasks -- number of other licensing tasks completed.

In FY 2004, several high priority activities, such as power grid reliability, changes to nuclear facility security plans, safeguards contingency plans, and guard force training and qualification plans resulted in the NRC reprogramming resources to accommodate the additional work. One of the programs affected by the reprogramming of resources was operating power reactor licensing actions. As a result, at the end of FY 2004, the size of the licensing action inventory exceeded the goal of # 1000 and the goal of completing at least 96 percent of the licensing actions in less than or equal to one year was not met. The effects of the reprogramming will continue into FY 2005 and FY 2006. The licensing actions inventory and timeliness goals for FY 2005 will be changed. Additional resources will be allocated in FY 2006 to work down the inventory and improve timeliness to meet the original timeliness and inventory goals.

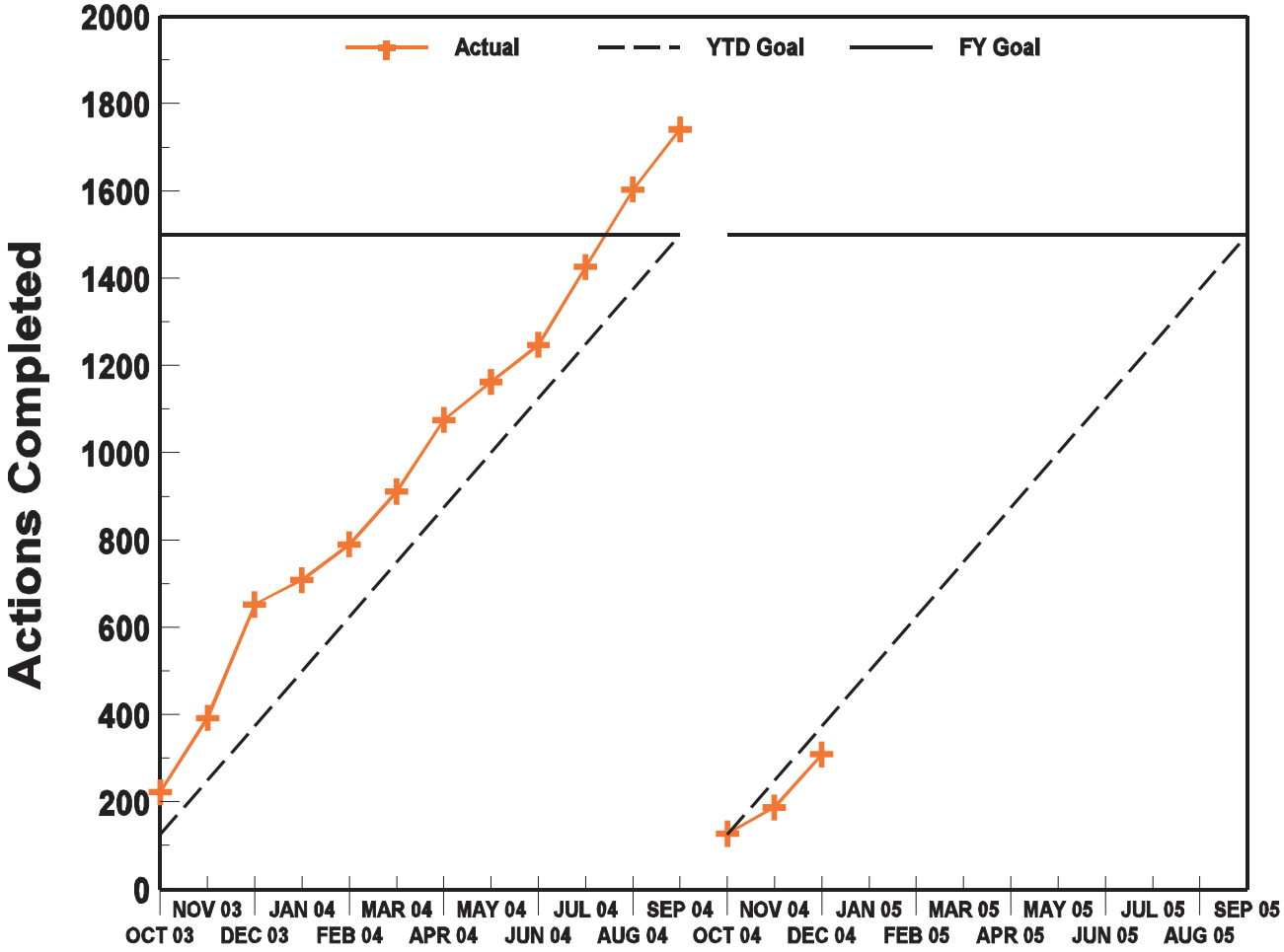
The actual FY 2003 and FY 2004 results, the FY 2005 goals, and the actual FY 2005 results, as of December 31, 2004, for the four NRC Performance Plan output measures for operating power reactor licensing actions and other licensing tasks are shown in the table below:

PERFORMANCE PLAN				
Output Measure	**FY 2003 Actual**	**FY 2004 Actual**	**FY 2005 Goals**	**FY 2005 Actual (thru 12/31/2004)**
Licensing actions completed/year	1774	1741	$ 1500	309
Age of licensing action inventory	96% # 1 year; and 100% # 2 years	91% # 1 year; and 100% # 2 years	90% # 1 year; and 100% # 2 years	87%# 1 year; and 99 % # 2 years
Size of licensing action inventory	1296	1135	# 1200	1270
Other licensing tasks completed/year	500	671	$ 500	97

The charts on the pages that follow demonstrate NRC's FY 2005 trends for the four operating power reactor licensing action and other licensing task output measure goals:

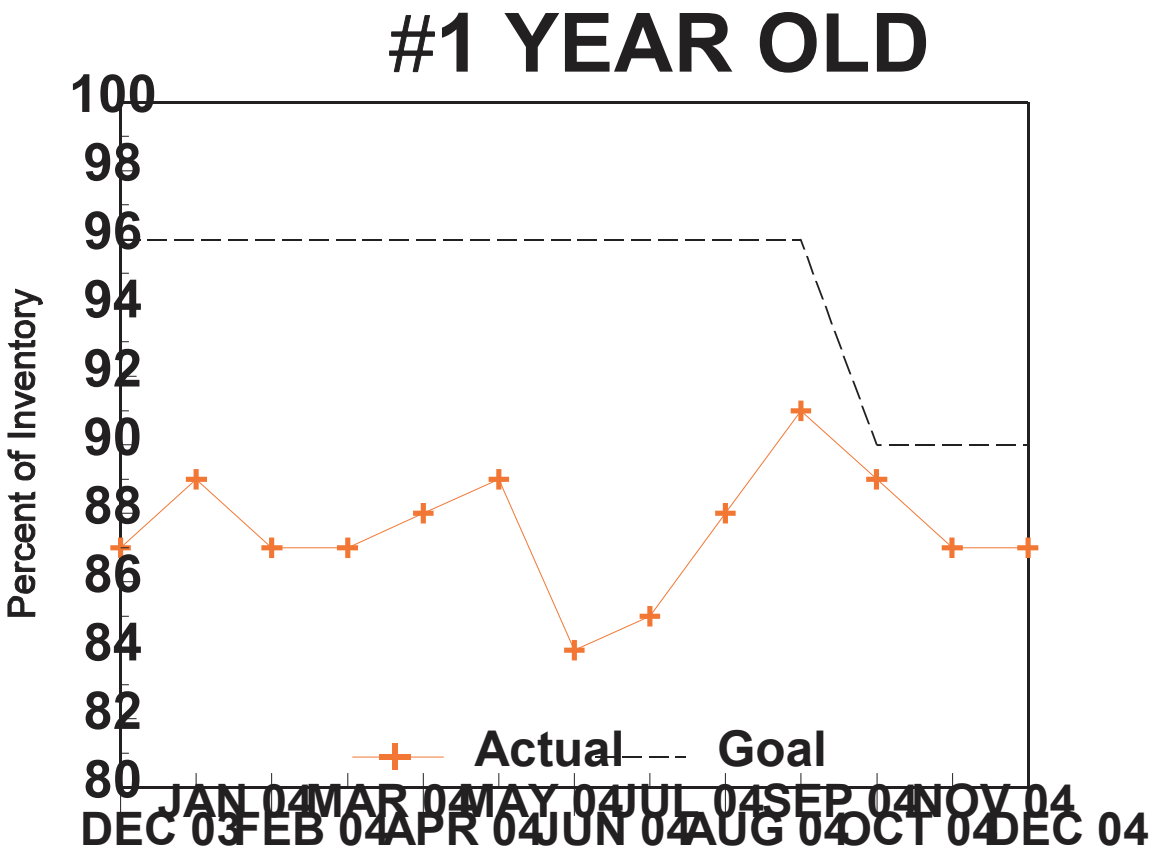
Nuclear Reactor Safety - Reactor Licensing

Performance Plan Target: Completed Licensing Actions



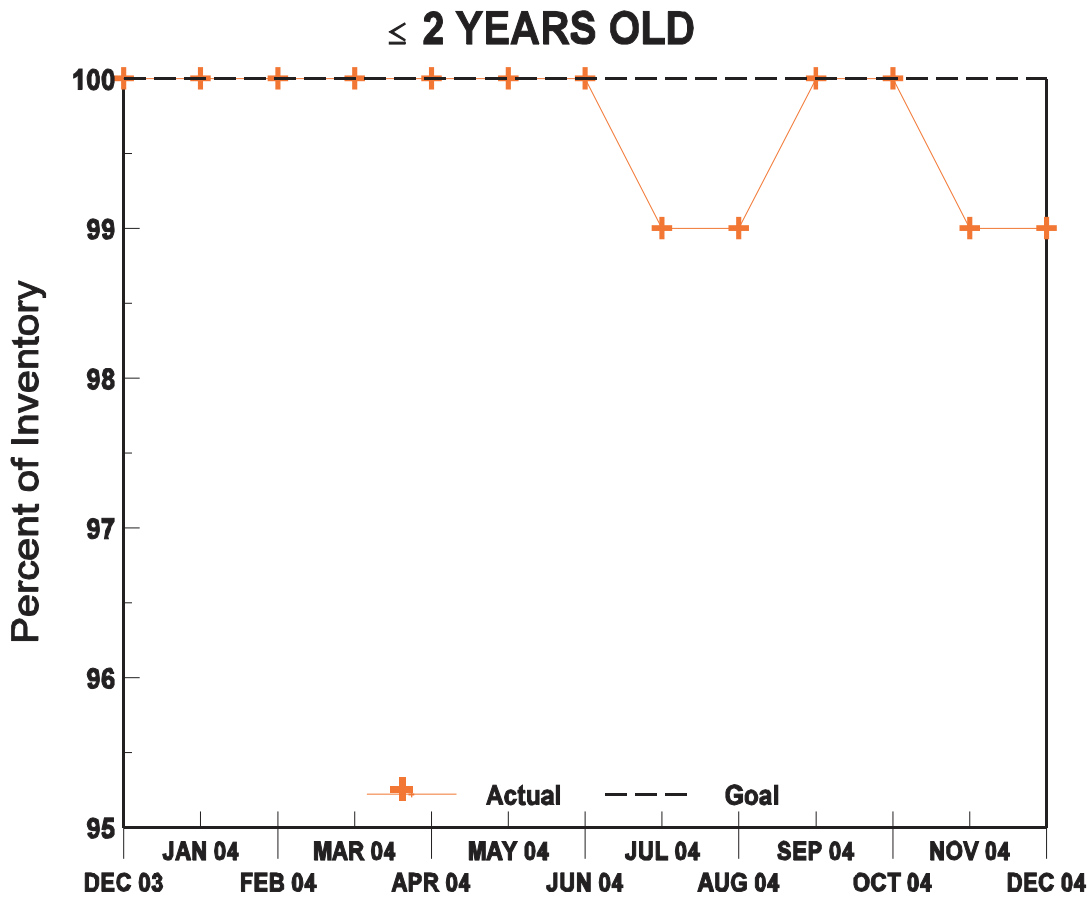
Nuclear Reactor Safety - Reac

Performance Plan Target: Age of Licensing Action Inventory



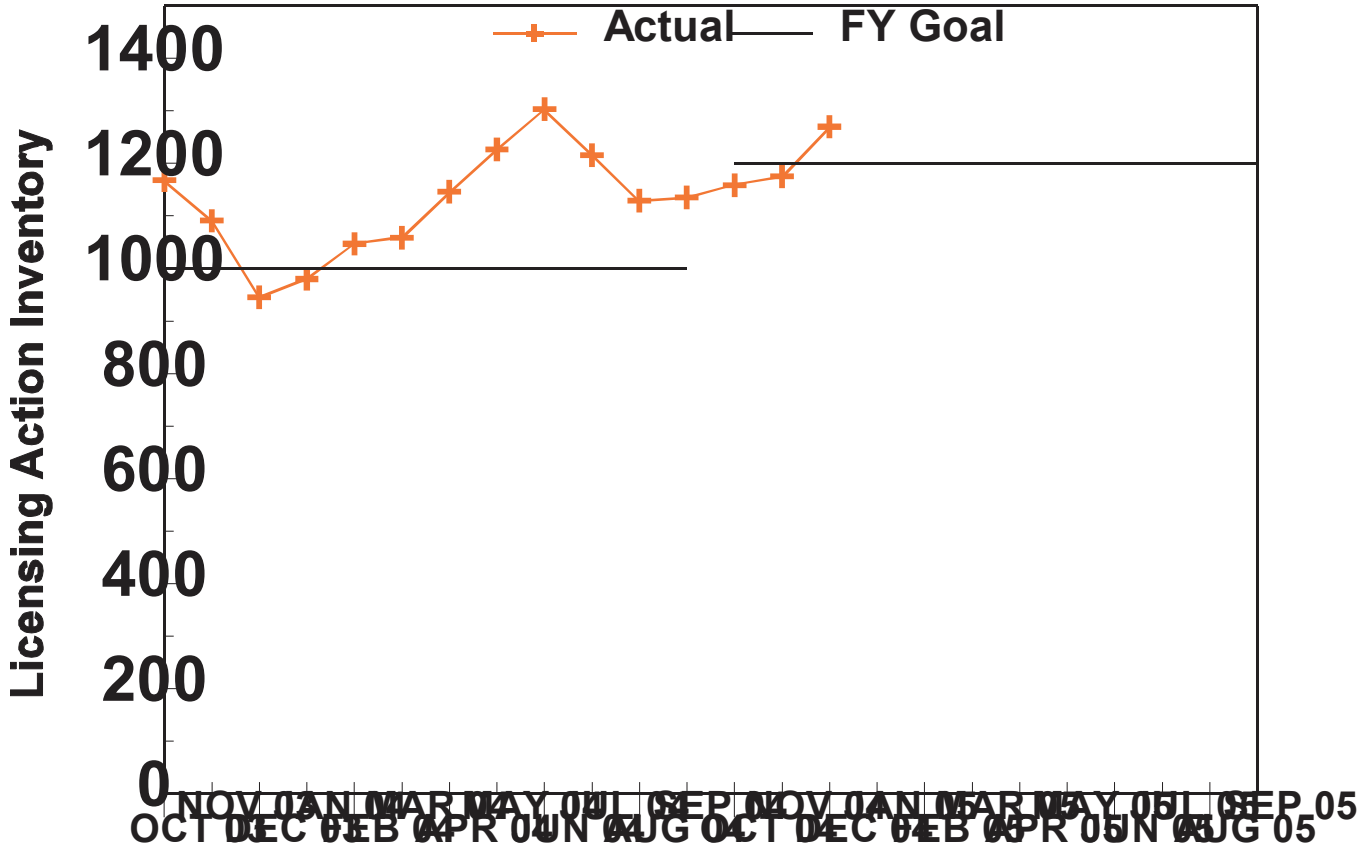
Nuclear Reactor Safety - Reactor Licensing

Performance Plan Target: Age of Licensing Action Inventory

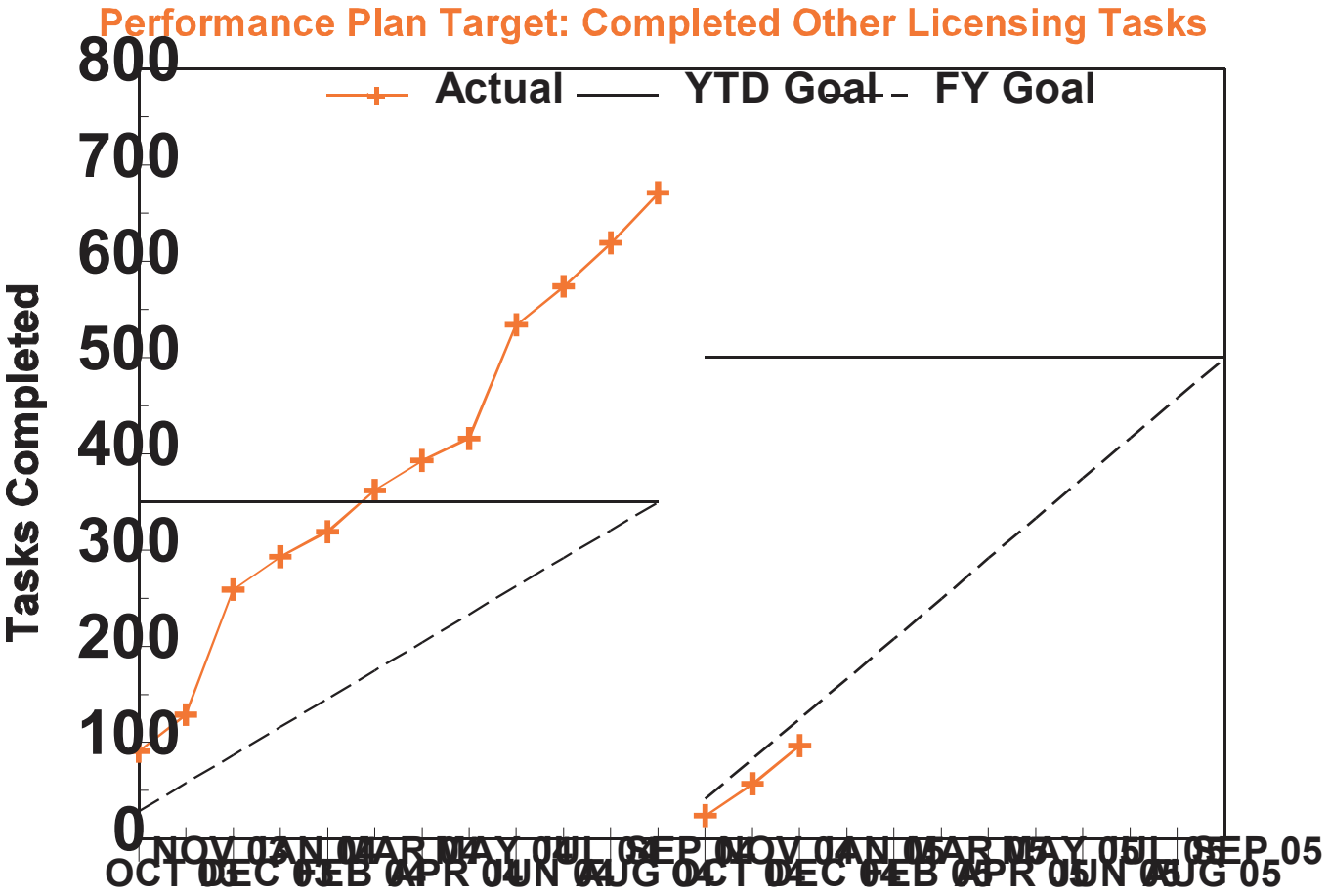


Nuclear Reactor Safety - Reac

Performance Plan: Size of Licensing Action Inventory



Nuclear Reactor Safety - Reac



V Status of License Renewal Activities

Farley, Units 1 and 2, License Renewal Application

The Farley license renewal application is currently under review. The draft supplemental environmental impact statement (SEIS) was issued for public comment in August 2004, and the comment period ended in November 2004. The staff is addressing the comments received on the draft SEIS and is preparing to issue the final SEIS in March 2005. The draft safety evaluation report was issued in October 2004. The applicant's comments on the draft safety evaluation report were received and the staff is preparing to issue the report in March 2005.

Arkansas Nuclear One, Unit 2, License Renewal Application

The Arkansas Unit 2 license renewal application is currently under review. The draft SEIS was issued for public comment in August 2004, and the comment period ended in November 2004. The staff is addressing the comments received on the draft SEIS and is preparing to issue the final SEIS in April 2005. The draft safety evaluation report was issued in November 2004. The applicant's comments on the draft safety evaluation report were received and the staff is preparing to issue the report in May 2005.

Cook, Units 1 and 2, License Renewal Application

The Cook license renewal application is currently under review. The draft SEIS was issued for public comment in September 2004, and the comment period ended in December 2004. The staff is addressing the comments received on the draft SEIS and is preparing to issue the final SEIS in May 2005. The safety evaluation report, identifying any remaining open items, was issued in December 2004.

Browns Ferry, Units 1, 2, and 3, License Renewal Application

The Browns Ferry license renewal application is currently under review. The draft SEIS was issued for public comment in December 2004, and the public comment period ends in March 2005. The safety evaluation report, identifying any remaining open items, is scheduled to be issued in August 2005.

Millstone, Units 2 and 3, License Renewal Application

The Millstone license renewal application is currently under review and the staff is preparing requests for additional information. The draft SEIS was issued for public comment in December 2004, and the public comment period ends in March 2005. The safety evaluation report, identifying any remaining open items, is scheduled to be issued in February 2005. A request for hearing was received in response to the NRC's notice of opportunity for hearing and an Atomic Safety and Licensing Board (ASLB) was established. The ASLB found that none of the petitioner's contentions satisfied the requirements to be admissible for litigation and denied the petition for hearing. The petitioner's motion for reconsideration was denied by the ASLB and the petitioner appealed the ASLB decision to the Commission. In December 2004, the Commission upheld the ASLB's decision denying the request for hearing.

Point Beach, Units 1 and 2, License Renewal Application

The Point Beach license renewal application is currently under review and the staff is preparing requests for additional information. The draft SEIS is scheduled to be issued in January 2005, and the safety evaluation report, identifying any remaining open items, is scheduled to be issued in May 2005.

Nine Mile Point, Units 1 and 2, License Renewal Application

The Nine Mile Point license renewal application is currently under review and the staff is preparing requests for additional information. The draft SEIS is scheduled to be issued in April 2005, and the safety evaluation report, identifying any remaining open items, is scheduled to be issued in June 2005.

Brunswick, Units 1 and 2, License Renewal Application

The Brunswick license renewal application is currently under review and the staff is preparing requests for additional information. The draft SEIS is scheduled to be issued in September 2005, and the safety evaluation report, identifying any remaining open items, is scheduled to be issued in December 2005.

VI Status of Review of Private Fuel Storage, Limited Liability Corporation's Application for a License to Operate an Independent Spent Fuel Storage Installation on the Reservation of the Skull Valley Band of Goshute Indians

Litigation continues on the application by Private Fuel Storage, L.L.C. (PFS) for a license to construct and operate an independent spent fuel storage installation (ISFSI) on the Reservation of the Skull Valley Band of Goshute Indians in Skull Valley, Utah. As noted in previous monthly updates, one issue concerning the consequences of an F16 aircraft crash accident at the proposed facility remains in litigation before the ASLB. Hearings on this matter have been completed.

During this reporting period, the parties filed their responses to the State's post-hearing challenges related to the aircraft crash consequence issues. In an Advisory dated December 22, 2004, the ASLB stated that the State's filing of December 21, 2004, would be the final filing permitted on the aircraft crash consequences matter. Also, the ASLB in its Advisory stated that it does not plan to hold oral arguments on the State's late filed contention (UU) on issues related to whether the proposed Yucca Mountain repository will accept spent fuel canisters from the PFS Facility.

The Commission currently has under consideration certain matters raised on appeal from prior ASLB decisions. These involve the State of Utah's petition for review of the ASLB's rulings on the redaction of proprietary information from the Licensing Board's decisions on financial assurance.

VII Enforcement Process and Summary of Reactor Enforcement by Region

Reactor Enforcement by Region

Reactor Enforcement Actions						
		Region I	Region II	Region III	Region IV	TOTAL
Severity Level I	December 04	0	0	0	0	0
	FY 05 YTD Total	0	0	0	0	0
	FY 04 Total	0	0	0	0	0
	FY 03 Total	0	0	0	0	0
Severity Level II	December 04	0	0	0	0	0
	FY 05 YTD Total	0	0	0	0	0
	FY 04 Total	0	1	0	0	1
	FY 03 Total	0	0	0	0	0
Severity Level III	December 04	0	0	0	0	0
	FY 05 YTD Total	0	0	0	0	0
	FY 04 Total	1	2	4	0	7
	FY 03 Total	2	0	4	0	6
Cited Severity Level IV or GREEN	December 04	0	0	0	0	0
	FY 05 YTD Total	0	0	0	0	0
	FY 04 Total	1	0	2	2	5
	FY 03 Total	1	0	2	1	4
Non-Cited Severity Level IV or GREEN	December 04	8	1	12	14	35
	FY 05 YTD Total	67	47	80	64	258
	FY 04 Total	271	175	290	301	1037
	FY 03 Total	211	164	253	184	812

* Numbers of violations are based on enforcement action tracking system (EATS) data that may be subject to minor changes following verification. The numbers shown as Severity Level I, II, III or IV refer to the number of Severity Level I, II, III, and IV violations or problems. The monthly totals generally lag by 30 days due to inspection report and enforcement development.

Escalated Reactor Enforcement Actions Associated with the Reactor Oversight Process						
		Region I	Region II	Region III	Region IV	Total
Notices of Violation Related to RED, YELLOW, or WHITE Findings	Dec 04 RED	0	0	0	0	0
	Dec 04 YELLOW	0	0	0	0	0
	Dec 04 WHITE	0	0	0	0	0
	FY 05 YTD Total	0	0	0	0	0
	FY 04 Total	3	4	7	6	20
	FY 03 Total	6	1	7	1	15

Description of Significant Actions Taken During December 2004*

There were no significant enforcement actions taken during December 2004.

VIII Power Reactor Security Regulations

In response to the terrorist attacks on September 11, 2001, the NRC and the nuclear industry have taken many actions to ensure the security at nuclear power plants. A series of Advisories, Orders, and Regulatory Issue Summaries have been issued to strengthen further the security of NRC-licensed facilities and control of nuclear materials.

Orders were issued on April 29, 2003, to revise the threat against which individual power reactor licensees and category I fuel cycle facilities must be able to defend (design basis threat [DBT]), limit the number of hours that security personnel can work, and enhance training and qualification requirements for security personnel. All licensees implemented the Orders by October 29, 2004.

Orders were issued on October 23, 2003, to all nuclear reactor licensees and research reactor licensees that transport spent nuclear fuel. The licensees subject to the Order have been issued a specific license by NRC authorizing the possession of spent nuclear fuel and a general license authorizing the transportation of spent nuclear fuel in a transport package approved by the Commission in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR Parts 50 and 71.

In March 2003, the NRC initiated a pilot program for full force-on-force exercises, which used expanded adversary characteristics that were developed as a result of the increased post 9/11 threat. The purpose of the force-on-force exercises is to assess and improve, as necessary, performance of defensive strategies at licensed facilities. Pilot force-on-force exercises were completed at fifteen plants in 2003. The staff provided a paper to the Commission summarizing

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**Security related enforcement actions are not included in the statistics in the above Tables or in the Description of Significant Action due to the sensitive nature of security findings.

lessons learned from the force-on-force pilot program and how these lessons could be factored into the full implementation of the force-on-force program. The Commission approved enhanced force-on-force testing, and sixteen transitional force-on-force tests were conducted through October 2004. In November 2004, the NRC implemented triennial force-on-force testing program and by mid-December 2004, had completed two of the twenty-two scheduled exercises .

To enhance the realism and effectiveness of the force-on-force exercises, the NRC has established fitness and training standards for mock adversary force personnel. Application of these standards provides assurance that the mock adversary force has received appropriate training in offensive tactics and is a credible and challenging adversary. The NRC retains responsibility for oversight of the mock adversary force and evaluation of licensee performance. In addition, measures have been established to minimize any possibility for a conflict of interest with respect to responsibilities for physical protection. To date, the mock adversary force has performed adequately in the six force-on-force exercises it has participated in.

Since 9/11, the staff suspended the physical protection portion of the baseline inspections in the Reactor Oversight Process and focused NRC security inspections on licensee implementation of compensatory measures to address the post-9/11 threat environment. In March 2004, the staff began implementation of the revised baseline inspection program which took into consideration enhanced security requirements and the higher threat environment. During FY 2005, inspection efforts are focusing on verifying implementation of the revised security plans. Implementation of all elements of the baseline inspection program will commence in 2006.

The NRC continues to support U.S. Department of Homeland Security (DHS)/Homeland Security Council (HSC) initiative to enhance integrated response planning for power reactor facilities. Two Integrated Response Tabletop exercises were completed in 2004. The staff is continuing to work with HSC, DHS, Federal Bureau of Investigation (FBI) and others to develop plans to address recommended actions. Additionally, the NRC completed six imminent aircraft threat announced walk-throughs with nuclear power plants and lessons learned have been incorporated into a Safeguards Advisory. Walk-throughs are scheduled to resume in March 2005. The staff is developing Emergency Action Levels (EALs) for all imminent threats. The EAL development program includes plans to coordinate issues with other agencies and state and local governments.

IX Power Uprates

The staff has assigned power uprate license amendment reviews a high priority. The staff considers power uprate applications among the most significant licensing actions and is therefore conducting power uprate reviews on accelerated schedules.

There are three types of power uprates. Measurement uncertainty recapture (MUR) power uprates are power uprates of less than 2 percent and are based on the use of more accurate feedwater flow measurement techniques. Stretch power uprates are power uprates that are typically on the order of less than 7 percent and are within the design capacity of the plant. Stretch power uprates require only minor plant modification. Extended power uprates (EPUs) are power uprates beyond the design capacity of the plant and, thus, require major plant modification.

Licensees have been applying for and implementing power uprates since the 1970s as a way to increase the power output of their plants. The staff has been conducting power uprate reviews since then, and to date, has completed 102 such reviews. Approximately 12,650 megawatts-thermal (4217 megawatts-electric) or an equivalent of about four nuclear power plant units has been gained through implementation of power uprates at existing plants. The staff currently has 11 plant-specific power uprate applications under review. The 11 applications under review include 4 stretch power uprates and 7 EPUs.

In July 2004, the staff completed a survey of nuclear power plant licensees to obtain information regarding industry's plans related to power uprate applications. Based on this survey, licensees plan to submit power uprate applications for 16 nuclear power plant units in the next 5 years. These include 7 MUR power uprates, 1 stretch power uprate, and 8 EPU. Planned power uprates are expected to result in an increase of about 2419 megawatts-thermal (806 megawatts-electric). The next survey is scheduled to be completed by January 31, 2005.

X Status of the Davis-Besse Nuclear Power Station

Interim reports to be provided in March 2005, September 2005, and March 2006.