

NRR Interface with NEI LATF

NRR Point of Contact for NEI LATF:

- Deputy Director, Division of Operating Reactor Licensing

Purpose:

- Work with the NEI LATF to identify and address potential process improvements in NRR's/Licensees' licensing procedures and processes.

Objectives:

- Serve as the NRR contact with the NEI LATF.
- Identify, address, and implement actions to address potential NRR/Licensee licensing process improvements.
- Identify NRC contacts for other NEI LATF identified issues.

Process:

- Support meetings with NEI LATF.
- Identify and support potential process improvements as identified on NRC/NEI LATF Follow-up Item List.
- Provide NEI LATF status of NRR actions resulting from LATF meetings.
- Provide status and opportunity for NEI LATF support and input to potential process improvements.
- Arrange for NRC contacts for other NEI LATF identified issues to support NEI LATF meetings as appropriate.

10 CFR 50.59 Implementation Guidance

- The LATF 50.59 Team is evaluating lessons learned since NEI published its guideline¹ on 10 CFR 50.59 in November 2000.
- A separate NEI Team is engaged in a companion effort for 10 CFR 72.48.²
- Who is the NRC contact for 50.59 questions?

Generic Issues Management Process

- On March 29, the CRGR held a public meeting with stakeholders to discuss NRC backfit controls.
- On May 18, NEI submitted a letter to CRGR containing examples of staff positions that warranted a regulatory analysis (*Attachment A is NEI's letter*).
- The LATF GIM Team is drafting a white paper to describe additional examples (3rd quarter, 2007).

License Amendment Request Guidelines

- The LATF LAR Team is incorporating NRC comments into NEI's LAR guideline³ (*Attachment B is NRC's letter*).
- The LATF RAI Team has been merged into the LAR Team, and the NEI RAI pilot project has been closed.
- The LAR Team plans to incorporate an "RAI checklist," based on LIC-101, into the LAR guideline (*Attachment C is NEI's RAI checklist*).
- The LAR Team recommends that NRC include the checklist in LIC-101.
- Licensees continue to see RAIs that add little or no value, and that seem inconsistent with the guidance in LIC-101.

¹ NEI 96-07, Revision 1, "Guidelines for 10 CFR 50.59 Implementation" (November 2000)

² NEI 96-07, Appendix B, "Guidelines for 10 CFR 72.48 Implementation" (March 2001)

³ NEI 06-02, Revision 0, "License Amendment Request Guidelines" (December 2006)

NEI Licensing Forum

- The 7th annual Forum is scheduled for October 15-16 in Alexandria, VA.
- As in all preceding Forums, NEI appreciates the NRC staff's contributions to the agenda and candid participation in plenary and panel sessions.
- The target date for a draft agenda is July 1.

Operability Determination Process

- The LATF ODP Team begins a new series of meetings on May 24.
- The purpose is to prepare a comment letter to NRC on operating experience with the ODP Inspection Manual Chapter in Part 9900.⁴
- The LATF Class 2&3 Team submitted a revised white paper⁵ on May 11 to address NRC comments received at a meeting on February 15.
- NEI reiterates its request for NRC to publish interim guidance to inspectors confirming that licensees are not "required" to declare ASME Class 2 and 3 components inoperable immediately on discovery of operational leakage.
- Who is the NRC contact for ODP questions?

Pandemic Licensing Plan

- The LATF Pandemic Team is incorporating NRC comments into a revised white paper.⁶
- The Team is considering "table top" exercises to test the licensing plan.
- NEI recommends that NRC form a "task working group" for management oversight and to expedite the licensing plan for reduced staffing.

⁴ NRC Inspection Manual, Part 9900: Technical Guidance, "Operability Determinations & Functionality Assessments for Resolution of Degraded or Nonconforming Conditions Adverse to Quality or Safety" (September 26, 2005).

⁵ NEI White Paper, Revision 2, "Treatment of Operational Leakage from ASME Class 2 and 3 Components" (May 11, 2007).

⁶ NEI White Paper, Revision 1, "Pandemic Licensing Plan."

Topical Report Process

- The LATF Topical Report Team will meet in late June.
- The objective is to establish a scope and schedule for topical report process improvement recommendations.
- The Team requests a public meeting with NRC in the 3rd quarter.

New Business

Reportability

- What is the status of the next revision to NUREG-1022?⁷
- The LATF requests an opportunity for stakeholder input.
- Who is the NRC contact for reportability questions?

Task Interface Agreement Process

- Licensees continue to see TIAs that appear inconsistent with COM-106.⁸
- Who is the NRC contact for TIA questions?

NRR Office Instruction LIC-101⁹

- The LATF requests the opportunity to comment on the next revision.

NRR's Interactions with NEI LATF (Attachment D)

- The LATF recommends one additional process item, "Provide a list upcoming generic communications."

Industry Experience with Milestone Scheduling

- The LATF requests a meeting or conference call with NRC in mid-June.

Next Meeting

- July 26, 2007

⁷ NUREG-1022, Revision 2, "Event Reporting Guidelines 10 CFR 50.72 and 50.73" (October 2000).

⁸ COM-106, Revision 2, "Control of Task Interface Agreements" (November 30, 2005).

⁹ LIC-101, Revision 3, "License Amendment Review Procedures" (February 9, 2004).



NUCLEAR ENERGY INSTITUTE

Thomas C. Houghton
DIRECTOR
STRATEGIC REGULATORY PROGRAMS
NUCLEAR GENERATION DIVISION

May 18, 2007

Mr. Michael R. Johnson
Chairman, Committee to Review Generic Requirements
U.S. Nuclear Regulatory Commission
Mail Stop 0-10A1
Washington, DC 20555-0001

Subject: CRGR Request for Examples of Plant Specific Requirements Imposed on Licensees

Project Number: 689

Dear Mr. Johnson:

The Nuclear Energy Institute presented recommendations for enhancing the effectiveness of the Committee to Review Generic Requirements (CRGR) at a public meeting on March 29, 2007. One of the recommendations was that CRGR become more involved in the oversight of plant specific cases in which the backfitting rule does not appear to have been adequately followed.

Following the meeting, NEI was asked to provide some examples to help the committee understand the industry's concerns. In response to that request, enclosed are six examples, taken from individual plant license amendment requests, inspection guidance, inspection reports and a regulatory information summary, which we believe should have required a regulatory analysis. The examples provide a brief description of the issue, the licensee's position, the NRC position, the need for a regulatory analysis, the status or final outcome, and the impact of the NRC staff position. These examples demonstrate instances where new staff positions have been imposed upon individual licensees without the appropriate backfit analysis. These examples are a subset of several dozen examples that we are developing for a white paper on plant specific backfits.

We believe that it is in the best interest of public health and safety, efficiency, and the stability and predictability of the regulatory process if more discipline is brought to bear on NRC decisions and actions involving the implementation of new staff positions outside the rulemaking process. Based on our review to date, several conclusions have emerged:

- Issues that arise in individual plant situations are often applied to other plants, making them in fact generic issues which should be resolved on a generic basis. There does not appear to

be an effective mechanism to ensure that these generic issues are recognized and handled as such. CRGR, with industry input when these situations occur, could accomplish this. In our view, accurate identification of generic issues and implementation of a single, consistent resolution for these issues would be better to ensure regulatory certainty and effectiveness.

- It is appropriate that NRC staff develop new regulatory positions that they believe will enhance safety. However, this needs to be done through a disciplined process that effectively, openly, and transparently establishes the safety and cost-benefit nexus using existing NRC backfit and regulatory analysis procedures.¹ From the examples provided, this does not appear to be occurring. CRGR oversight in this area would be appropriate.
- It is inappropriate for NRC staff to suggest that a licensee “volunteered” to take a regulatory action rather than file a backfit claim when the licensee is under scheduling pressure or does not want to erode its regulatory goodwill. It is the responsibility of the regulator to follow its own regulations, which means performing the regulatory analyses. CRGR, in its oversight role as guardian of the integrity of the backfitting rule, can play a critical role in monitoring plant specific cases brought to its attention by industry stakeholders.

We request to meet with the CRGR to discuss these examples in more detail and to explore possible means by which CRGR could oversee the appropriate implementation of new staff positions. Management Directive 8.4, Management of Facility-specific Backfitting and Information Collection, already prescribes a role for CRGR in facility-specific backfitting:

“Periodically conducts audits, typically every 5 years, to assess the effectiveness of the NRC’s administrative controls for facility-specific backfitting as part of its regulatory effectiveness responsibility. This task is in addition to monitoring the overall effectiveness of the NRC’s generic backfit management process. (a)

“Develops the necessary guidance to conduct audits of the NRC’s administrative controls for facility-specific backfitting practices in various headquarters and regional offices. (b)

“Reviews new or revised office and regional procedures developed in accordance with this directive to ensure consistency among the offices and regions in implementing the provisions of the NRC’s backfit rules. The CRGR review shall focus on the staff practices for facility-specific backfit management and assess the adequacy of management direction, programmatic and administrative controls, and

¹ See Management Directive 8.4, Management of Facility-specific Backfitting and Information Collection, and NRR Office Instruction LIC-202, Procedures for Managing Plant-specific Backfits and 50.54(f) Information Requests.

Mr. Michael R. Johnson

May 18, 2007

Page 3

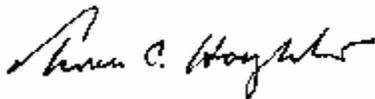
interoffice coordination for processing backfits, as well as staff guidance and training.
(c)"

We endorse these responsibilities. However, given the current management oversight of plant specific backfits, as demonstrated in our examples, we do not believe these CRGR responsibilities can be effectively met unless more regular oversight by CRGR is provided. We also believe that more direct industry input to CRGR will facilitate compliance with the backfitting rule.

In conclusion, we reiterate our March 29 recommendations that the CRGR establish a policy of holding open CRGR meetings to allow for stakeholder input (of course, like ACRS, the CRGR would also hold closed sessions as well), and to provide a venue to raise issues related to generic and plant specific situations for CRGR consideration.

If you have questions or require additional information, please contact me at 202-739-8107 or tch@nei.org, or Mike Schoppman at 202-739-8011 or mas@nei.org.

Sincerely,



Thomas C. Houghton

Enclosure

c: Mr. Charles E. Ader, Director, Division of Safety Systems and Risk Assessment, NRC
Mr. Bruce A. Boger, Associate Director for Operating Reactor Oversight and Licensing, NRC
Mr. William M. Dean, Deputy Director for the Office of Nuclear Security and Incident Response, NRC
Mr. John A. Grobe, Associate Director for Engineering and Safety Systems, NRC
Mr. Thomas P. Gwynn, Deputy Regional Administrator, Region IV, NRC
Mr. Gary M. Holahan, Deputy Director for the Office of New Reactors, NRC
Mr. Eric J. Leeds, Deputy Director for the Office of Nuclear Material Safety and Safeguards, NRC
Mr. George C. Pangburn, Deputy Director for the Office of Federal and State Materials and Environmental Management Programs, NRC
Mr. James T. Wiggins, Deputy Director for the Office of Nuclear Reactor Regulation, NRC
Ms. Kathryn L. Winsberg, Assistant General Counsel, NRC

Industry Handouts

Issue #5 NRC-Mandated Method Change

Issue Description

Approximately two years before a scheduled steam generator replacement outage, a licensee submitted a license amendment request (LAR) that included the re-analysis of several accidents using the physical and thermodynamic characteristics of the new generators. The re-analysis was based on an NRC-approved methodology that was documented in the current licensing basis (CLB) for the plant. This methodology is used by a majority of U.S. PWRs. About two months before the amendment was needed to support plant restart, NRC raised a concern about the compliance of an aspect of the methodology with 10 CFR 50.46. The NRC reviewer advised that the LAR could not be approved unless the licensee changed the methodology or accepted an operational penalty. The stated basis for the reviewer's position was that an element of the licensing basis method was not in compliance with 10 CFR 50.46.

Licensee Position

- The licensee disagreed with the NRC's compliance position because the methodology in question is part of the plant-specific licensing basis and conforms with 10 CFR 50.46 and Appendix K.
- NRC should raise critical path concerns well before the need date for the requested licensing action.
- In imposing these conditions on the LAR, the NRC dismissed extensive plant-specific and industry precedent.
- The regulatory process should permit plant operation pending resolution of disagreements, subject to acceptance criteria that ensure sufficient near-term safety margin.
- The NRC position is a "new or different interpretation" in the context of 10 CFR 50.109.

NRC Staff Position

The reviewer took the position that one element of the licensing basis methodology no longer complies with 10 CFR 50.46. The reviewer did not provide a basis for the position.

Need for NRC Regulatory Analysis

- Either verify that the regulatory position is not new or different, or determine the safety or compliance basis if the position is new or different.
- Determine whether the change to the plant-specific licensing basis passes a cost-benefit test.
- Ensure NRC staff conformance with standard licensing processes and NRC internal office instructions.
- Ensure proper consideration of applicable precedent.
- Obtain input from other stakeholders that have an interest in the methodology in question.
- Ensure management oversight.

Status or Final Outcome

The licensee disagreed with NRC, but accepted the NRC position to obtain approval of a time-sensitive licensing action.

Impact of NRC Staff Position

- The NRC position does not result in an improvement in plant safety or security.
- The NRC position increased review and operational costs without commensurate safety benefit.
- The stability and reliability of the plant-specific licensing basis are reduced when NRC mandates a change without performing a regulatory analysis.
- Resources (NRC and licensee) are not used effectively when NRC pursues an issue with generic applicability (such as a method change) with a series of plant-specific licensing actions. Generic issues should be dispositioned with one front-end technical review followed by a standardized implementation plan (such as the CLIIP). The objective should be "1 issue, 1 review, 1 resolution."
- The industry sees this example as a change in regulatory position without justification and without conformance with NRC internal procedures.

Issue #9: Treatment of ODP Guidance as a Requirement (Class 2&3 Flaws)

<p>Issue Description</p> <ul style="list-style-type: none">• RIS 2005-20 distributed a new Inspection Manual Chapter (IMC) containing revised guidance on the “operability determination process.” The new IMC supplemented and superseded the process described in Generic Letter 91-18. Appendix C of the IMC contains guidance on the treatment of specific operability issues.• IMC Appendix C.11 and Appendix C.12 pertain to “flaw evaluation” and “operational leakage,” respectively. Appendix C.11 states that a component containing a flaw that exceeds the threshold of the ASME Code (or other applicable Code Case) is “inoperable until the NRC approves an alternative analysis, evaluation, or calculation to justify the system’s return to service with the flaw and the subsequent operability of the system.” Appendix C.12 states: “Upon discovery of leakage from a Class 1, 2, or 3 pressure boundary component (pipe wall, valve body, pump casing, etc.), the licensee must declare the component inoperable.”• Some NRC inspectors are using the IMC as the basis for proposed violations in cases where a licensee does not declare a Class 2 or 3 component inoperable on discovery of operational leakage. Thus, the IMC “guidance” is being improperly treated as a “requirement.”• An immediate declaration of inoperability starts a Tech Spec LCO (limiting condition for operation) clock. This can lead to a forced shutdown due to a pinhole leak in a non-safety-related component or a component that has low risk significance.
<p>Licensee Position</p> <ul style="list-style-type: none">• The plant-specific technical specifications, not the ASME Code, establish the bases for component operability.• NRC guidance cannot be used to preempt the control room operator from participating in an operability determination. Such a result is inconsistent with the main body of the IMC, which provides in all other cases a reasonable time frame for making an “immediate determination” (ID) of component operability. NEI has submitted a White Paper that proposes clarifying guidance for performing an ID of operational leakage from Class 2 and 3 components.• NEI has requested that NRC issue interim guidance pending final issue resolution and clarification of the IMC.
<p>NRC Staff Position</p> <p>Through-wall flaws in ASME Class 2 and 3 components do not satisfy ASME Code requirements; therefore, they are inoperable on discovery. [NEI has pointed out that this is not consistent with the Standard Technical Specifications, NUREG series 1430-1434.]</p>
<p>Need for Regulatory Analysis</p> <ul style="list-style-type: none">• Either verify that the regulatory position is not new or different, or determine the safety or compliance basis if the position is new or different.• Determine whether compliance with the contested Appendices in the IMC passes a cost-benefit test.• Ensure NRC staff conformance with standard licensing processes and NRC internal office instructions.• Ensure proper consideration of applicable operational and inspection precedent.• Obtain input from all other stakeholders that could be affected by the issue.• Ensure management oversight.
<p>Status or Final Outcome</p> <p>Licensees disagree with NRC, but accept the NRC position to maintain regulatory goodwill.</p>
<p>Impact of NRC Position</p> <ul style="list-style-type: none">• There is no impact (no improvement) in safety or security because pinhole leaks in Class 2 and 3 components are not safety issues.• Defining a component with a pinhole leak as inoperable at time of discovery could lead to a costly plant shutdown if the component is in technical specifications and the leak cannot be evaluated or repaired within the relatively short period of time permitted by the applicable limiting condition for operation (LCO). Thus, the plant would shutdown for a non-safety reason.• The NRC position excludes operating experience from the operational decision-making process.• The NRC position preempts licensed operators from having a role in the operability determination.• To avoid shutdown, the licensee is obliged to propose an emergency/exigent license amendment or initiate the notice of enforcement discretion (NOED).

Issue #15: EDG Output Frequency Range

Issue Description

- Some NRC inspection reports from Component Design Basis Inspections (CDBIs) have challenged licensees to defend how they account for acceptable operation of electrical safeguards equipment at all emergency diesel generator (EDG) output frequencies permitted by technical specification surveillance requirements (typically 60 Hz \pm 2%).¹
- The typical licensing basis assumes that equipment will operate at a nominal 60 Hz. NRC is questioning this fundamental design parameter by postulating extended operation at the extremes of the frequency range. In order to obtain approval for needed licensing actions, several licensees have revised the plant-specific licensing basis to either reduce the surveillance range in the technical specifications or commit to testing critical components at the most limiting frequency (usually the low end of the range). Industry is unaware of the NRC's basis for this new position.

Licensee Position

- The typical licensing basis assumes that electrical equipment will operate at the nominal design frequency of 60 Hz. This is a fundamental design parameter used in the design of essentially all electrical components for use on the U.S. electric grid.
- Control room operators and auxiliary equipment operators monitor EDG output frequency and adjust it as needed to maintain a nominal 60 Hz.
- There is extensive precedent in support of the existing plant procedures used to test EDGs and to demonstrate functionality of critical components.
- This is a generic issue, but NRC is proceeding plant by plant. The NRC position is leading to inconsistent, non-standard EDG surveillance practices across the industry.

NRC Staff Position

The NRC position is contained in various CDBI inspection reports. NEI is in the process of compiling the reports.

Need for Regulatory Analysis

- Either verify that the regulatory position is not new or different, or determine the safety or compliance basis if the position is new or different.
- Determine whether more restrictive technical specifications or testing requirements pass a cost-benefit test.
- Ensure NRC staff conformance with standard licensing processes and NRC internal office instructions.
- Ensure proper consideration of extensive precedent.
- Obtain input for all stakeholders potentially affected by the issue.
- Ensure NRC management oversight.

Status or Final Outcome

The industry disagrees with NRC, but several licensees have revised technical specifications in accordance with the NRC position to maintain regulatory goodwill.

Impact of NRC Staff Position

- NRC has imposed additional requirements and costs to manage an issue that has not been confirmed as a safety issue.
- The industry sees this example as a change in regulatory position without justification and without conformance with NRC internal procedures.
- Using individual inspection reports to establish a generic regulatory position deprives stakeholders of the opportunity to respond collectively to the position.
- The NRC inspection position is not consistent with NRC Standard Technical Specifications.

1 NUREG-1431, Vol. 1, Rev. 3.0, SR 3.8.1.2, "Standard Technical Specifications, Westinghouse Plants" (June 2004).

Issue #25: Tornado Missile Design Basis

Issue Description

- Safety-related components are placed in Class 1 structures to protect them from tornado missiles. However, if certain acceptance criteria in the NRC standard review plan (SRP) can be met, particular components may be excluded from the missile protection design basis.
- A number of licensees have received NRC approval to use the TORMIS code as the basis for exclusion. However, the NRC staff recently began to use the LAR process to question the acceptability of using TORMIS for the purpose of excluding exposed ventilation piping (i.e., piping that penetrates the Class 1 envelope) from the missile protection design basis.

Licensee Position

- The use of the TORMIS code is an element of the plant-specific licensing basis for a number of plants, as documented in their UFSARs and licensing history. UFSARs typically address missile protection in terms of complete systems, i.e., the UFSAR will state that “the system is missile protected.” Components (such as ventilation piping) that are part of the “system” are considered protected unless specifically excluded in a separate statement in the UFSAR.
- If the NRC now finds it necessary to question licensees about their interpretation of the tornado missile licensing basis, it should use a generic process rather than a series of non-standard, plant-specific licensing actions to do so. A front-loaded technical review, with stakeholder input, would be the most efficient and effective way to derive standard acceptance criteria that could be implemented by all affected licensees by using the consolidated line item improvement process (CLIIP).

NRC Staff Position

Some NRC staff members have questioned whether current UFSAR language is sufficient to conclude that exposed piping is missile protected. They also question the validity of using TORMIS for small targets. NEI is not aware of any documentation explaining the staff’s position.

Need for Regulatory Analysis

- Establish groundrules for using plant-specific risk profiles to identify at-risk components.
- Conduct a cost-benefit evaluation before requiring open-ended reanalysis.
- Develop a generic resolution based on a front-end technical review followed by a standardized implementation plan (such as the CLIIP). The objective should be “1 issue, 1 review, 1 resolution.”
- Ensure NRC staff conformance with standard licensing processes and NRC internal office instructions.
- Ensure proper consideration of applicable precedent.
- Obtain input from all stakeholders affected by the NRC staff’s position on TORMIS.
- Ensure NRC management participation in setting and reaching schedule milestones.

Status or Final Outcome

Affected licensees have been given an untenable choice between (1) initiating open-ended plant-specific analyses without benefit of a documented regulatory basis and (2) withdrawing the LAR. In most cases licensees will withdraw the LARs because they do not have the resources to act as a pilot plant for resolving a generic issue.

Impact of NRC Position

- There is a reasonable likelihood that the issue is not risk significant, yet there has been no attempt to establish groundrules for using risk-informed evaluation methods.
- The LAR process is not an efficient way to pursue a generic issue. A generic issue is not likely to be resolved by a set of unique, plant-specific licensing actions.
- Resources are not used effectively when NRC pursues an issue with generic applicability (such as a method change) with a series of plant-specific licensing actions.
- An opportunity to use the CLIIP is being overlooked.

Issue #34: Technical Specifications for Limiting Safety System Setpoints

Issue Description

- Since approximately 2004, the NRC has been using the RAI process to require licensees to modify plant-specific technical specifications that pertain to setpoints for limiting safety system settings (LSSS). The NRC position exceeds the typical plant-specific CLB.
- The issue has not been classified as a safety issue. The NRC reviewers' stated basis is compliance with 10 CFR 50.36(c)(1).
- The issue is well documented in NRC/industry correspondence.
- The final resolution for operating plants depends on the outcome of NRC's review of TSTF Traveler 493 (TSTF-493, Revision 2).
- Recently, NRC published BTP-12, which extends the LSSS issue into the licensing process for new-plant design certifications (DCs) and combined construction/operating licenses (COLs).

Licensee Position

- This is not a compliance issue. There are no inspection findings or enforcement actions that support the NRC's position that licensees must change their technical specifications to achieve compliance with 10 CFR 50.36(c)(1). The NRC is using the RAI process improperly to establish a new interpretation of 10 CFR 50.36 compliance.
- The NRC has withheld approval of time-sensitive LARs to leverage its position. Many licensees have compromised to obtain NRC approval of LARs that were necessary in support of plant modifications or startup from an outage. The NRC has not met its obligations under the backfitting rule (10 CFR 50.109).
- A backfitting claim is not a practical alternative for a licensee when the NRC staff is withholding approval of a time-sensitive LAR.
- The staff has used the LAR and RAI processes improperly to impose a high-cost resolution to a non-safety issue.

NRC Staff Position

- Refer to plant-specific LARs and NRC safety evaluations filed in ADAMS.
- NRC has not provided an evaluation of the industry's technical position, which is documented in several letters from NEI to NRC.

Need for Regulatory Analysis

- Either verify that the NRC reviewers' position is not new or different, or determine the safety or compliance basis if the position is new or different.
- Determine whether the change to the plant-specific licensing basis passes a cost-benefit test.
- Ensure NRC-staff conformance with standard licensing processes and internal NRC office instructions.
- Ensure that the NRC is acting properly in dismissing extensive precedent.
- Obtain stakeholder input.
- Ensure that NRC management agrees with the staff's position and actions.

Status or Final Outcome

- Operating plant licensees disagree with NRC, but compromise to obtain approval of time-sensitive licensing actions.
- DC and COL applicants are faced with a similar situation.
- The reviewers' position on setpoint is a backfit, independent of whether licensees file backfitting claims pursuant to 10 CFR 50.109. The NRC is not complying with its own regulations.

Impact of NRC Position

- No increase in safety, and possibly a decrease in safety due to the diversion of resources to a non-safety issue.
- Unilateral NRC changes to previously approved and documented licensing bases.
- Industry has experienced over three years of non-standard, plant-specific licensing actions instead of one standardized format using the CLIIP.
- High cost with no attendant increase in protection of public health and safety.

Issue #35: NRC-Mandated Change to the Licensing Basis (Station Blackout)

Issue Description

- A licensee submitted a license amendment request (LAR) for an extended power uprate of approximately 3%. The LAR was similar to a previously approved LAR for another unit at the same site.
- NRC issued a request for additional information (RAI) asking the licensee to change the plant's station blackout coping duration from 4 hours to 16 hours. This was a substantial change to the plant-specific licensing basis that was unrelated to the licensee's request.
- The NRC reviewer used a time-sensitive LAR to leverage a new position. The licensee was obliged to trade off its reluctance to change a compliance strategy (station blackout coping duration) with its need for the uprate amendment.

Licensee Position

- The licensee disagreed with the NRC's position because the basis for compliance with 10 CFR 50.63 had been approved by the NRC in 1992, and plant conditions had never identified a need to change the station blackout compliance strategy.
- The NRC reviewer's position was different from NRC-approved generic guidance in NUMARC 87-00.
- By imposing new conditions through the LAR process, the NRC reviewer unilaterally overruled a significant body of documented precedent.

NRC Staff Position

The NRC reviewer reinterpreted previously accepted guidance and concluded that the licensee had experienced more than one grid-related event within a 20-year period. The reviewer did not provide a basis for his new position.

Need for NRC Regulatory Analysis

- Either verify that the regulatory position is not new or different, or determine the safety or compliance basis if the position is new or different.
- Determine whether the change to the plant-specific licensing basis passes a cost-benefit test.
- Ensure NRC staff conformance with standard licensing processes and NRC internal office instructions.
- Ensure proper consideration of applicable precedent.
- Obtain input from other stakeholders subject to the station blackout rule (10 CFR 50.63).
- Ensure NRC management oversight.

Status or Final Outcome

The licensee disagreed with NRC, but changed the compliance strategy in order to obtain approval of a time-sensitive licensing action.

Impact of NRC Staff Position

- The NRC position does not result in an improvement in plant safety or security.
- The NRC position increased review and operational costs without commensurate safety benefit.
- The stability and reliability of the plant-specific licensing basis are reduced when NRC mandates a change without performing a regulatory analysis.
- Resources (NRC and licensee) are not used effectively when NRC pursues a new interpretation in reviewing/approving a plant-specific licensing action that has generic applicability (such as a compliance strategy involving a specific regulation that deviates from previously approved guidance).
- The industry sees this example as a change in regulatory position without justification and without conformance with NRC internal procedures.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

September 29, 2006

Mr. Jack W. Roe, Director
Operations Support
Nuclear Generation Division
Nuclear Energy Institute
1776 I Street, NW, Suite 400
Washington DC 20006-3708

Dear Mr. Roe:

This is in response to your letter dated July 27, 2006 (Agencywide Documents Access and Management System Accession No. ML062680323), submitting to the NRC the Final Draft for comment of NEI 06-02, "License Amendment Request Guidelines."

We have reviewed your draft document and recommend that you expand the document's scope to include further discussion on other important license amendment request (LAR) guidelines such as the public notification and comment procedures (*Federal Register*), the consolidated line item improvement process as it applies to precedent LARs, the no significant hazards consideration determination, and the framework for providing sufficient site-specific safety analysis and licensing basis to support proposed changes. We encourage you to incorporate additional license amendment process guidelines in your document consistent with NRC guidance LIC-101, Revision 3, "License Amendment Review Procedures," and COM-203, "Informal Interfacing and Exchange of Information with Licensees and Applicants."

While we recognize the importance of standardizing the format and content of LARs as a means to improve the efficiency and effectiveness of the LAR process, we encourage you to provide more focus on ensuring that LARs are complete and that sufficient detail is provided to the NRC in terms of regulatory requirements and the protection of public health and safety.

I appreciate you providing the NRC with the opportunity to review this draft document. My staff will be available to meet with NEI to have further dialogue on the detailed comments. To coordinate any further dialogue, please contact either Richard Guzman at (301) 415-1030, or Martin Murphy, at (301) 415-3138, of my staff.

Sincerely,

A handwritten signature in cursive script, appearing to read "Catherine Haney".

Catherine Haney, Director
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

RAI CHECKLIST (draft)

1. Regulatory Basis for the RAI
 - a) Is there a clear nexus between the information being requested and the staff's regulatory finding? (The staff should not issue any RAIs if the staff has, or can infer with a reasonable degree of confidence the necessary information to make the regulatory finding.)
 - b) Is the regulatory basis described in the RAI? (LIC-101 states that including the regulatory basis in the question is a good practice.)
2. Technical complexity of request
 - a) Are the questions specific rather than overly broad, and would the response to the RAI be of value to the staff's safety evaluation basis?
3. Risk significance of issue in question
 - a) Is the RAI justified in light of the risk significance of the issue in question? (LIC-101 Section 2.4.2 states, "In an effort to improve the incorporation of risk insights into its processes, the staff should make an initial judgment as to the scope and depth of review effort needed based on the risk significance of the specific application. If the application is of very low to no risk significance, that assessment should be reflected in the hours scheduled for reviewing the application (i.e., minimize the staff review of proposed changes with very low or no risk significance)."
4. Existence of precedent amendments
 - a) Consistent with LIC-101 Section 4.2, were previous reviews used by the staff to avoid asking unnecessary questions?
 - b) Was the licensee's use of precedent appropriate for use with the intended amendment?
5. Appropriate scope and depth of review
 - a) Does the RAI force licensees to take actions beyond those that are both directly related to the amendment and needed to provide reasonable assurance of plant safety?
6. Resource implications for both the staff and the licensee
 - a) Has the issuance of the RAI and the licensee's agreed upon time to respond been factored into the schedule established to complete the review within the licensing action timeliness goals *and the licensee's requested approval date*?
7. Information already on the docket
 - a) Is the information already available to the staff or could the answer be reasonably inferred from general knowledge, existing regulatory requirements, previously docketed correspondence, or generally accepted industry practice?
8. Communication
 - a) Has the licensee been notified prior to requesting the licensee to submit additional information to support the staff's review of a licensing action? (This notification should be a meeting or conference call attended by the PM, TB reviewer, and licensee. To help resolve the issues, preliminary questions may be faxed or e-mailed to the licensee prior to the meeting or conference call. Answers that are needed to make a regulatory finding (i.e., that are not merely clarifications of information already on the docket) need to be placed on the docket.)

DRAFT

NRR's Interactions with NEI LATF

NRR Point of Contact for NEI LATF:

- Deputy Director, Division of Operating Reactor Licensing

Purpose:

- Work with the NEI LATF to identify and address potential process improvements in NRR's/Licensees' licensing procedures and processes.

Objectives:

- Serve as the NRR contact with the NEI LATF.
- Identify, address, and implement actions to address potential NRR/Licensee licensing process improvements.
- Identify NRC contacts for other NEI LATF identified issues.

Process:

- Support meetings with NEI LATF.
- Identify and support potential process improvements as identified on NRC/NEI LATF Follow-up Item List.
- Provide NEI LATF status of NRR actions resulting from LATF meetings.
- Provide status and opportunity for NEI LATF support and input to potential process improvements.
- Arrange for NRC contacts for other NEI LATF identified issues to support NEI LATF meetings as appropriate.

DRAFT

January 25, 2007

LATF ACTION ITEMS

NEI Action Items from NRC/NEI meetings

NEI-YR-QTR-#	TOPIC	OVERSIGHT	ACTION	DUE DATE
NEI-07-Q1-01	Resource Management: TELECON - to prepare for a meeting on how Exelon and Entergy plan and budget for future licensing submittals	LAR Team	Schoppman coordinate with participants (NRC, NEI, Exelon, Entergy) to schedule a telecon	TBD
NEI-07-Q1-02	<u>Issue Management:</u> WHITE PAPER (coordinate with Houghton)	GIM Team	NEI submit draft WP to NRC GIM Team met at NEI on 4/24/07: <ul style="list-style-type: none"> • NEI distribute draft to Team 5/1 • Team comments to NEI 6/1 • Revised draft to Steering Group 6/15 • Steering Group comments to NEI 7/15 	8/15/07
NEI-07-Q1-03	<u>Pandemic Licensing Plan:</u> TELECON - discuss date/agenda for a meeting to hear initial NRC comments on the NEI pandemic white paper submitted on January 17, 2007	Pandemic Team	Schoppman call Peters to discuss meeting agenda and possible dates Public meeting held on 3/23/07. NEI is revising the WP.	COMPLETE
NEI-07-Q1-04	<u>Topical Report Process:</u> (1) NEI LETTER - comments on LIC-500 (2) MEETING - schedule next NRC/NEI meeting on TR process improvement	Topical Report Team	(1) NEI submit comments on LIC 500 (2) Schoppman coordinate with participants (NRC, TR Team) to schedule a meeting	(1) TBD (2) TBD
NEI-07-Q1-05	<u>First-of-a-Kind White Paper:</u> WHITE PAPER	FOAK Team	NEI submit draft WP to NRC	2nd Qtr 2007
NEI-07-Q1-06	<u>LATF Interface with NRC:</u> NRR "CHARTER"	LATF Steering Group	Provide comments on NRR's draft charter entitled, "NRR's Interactions with NEI LATF"	5/23/07

LATF ACTION ITEMS

NRC Action Items from NRC/NEI meetings

NEI-YR-QTR-#	TOPIC	OVERSIGHT	ACTION	DUE DATE
NRC-07-Q1-01	Develop a "charter" to describe the NRC interface with the NEI LATF	NRR DORL	Status Report	5/23/07
NRC-07-Q1-02	Consider using the quarterly LATF meetings to advise industry of pending generic communications.	NRR DPR	Status Report	5/23/07
NRC-07-Q1-03	Consider performing a self-assessment of the NRC acceptance review process.	NRR DORL	Status Report	5/23/07
NRC-07-Q1-04	Consider ways to provide electronic copies of approved amendments.	NRR DORL	Status Report	5/23/07
NRC-07-Q1-05	Consider requesting stakeholder comments on the next revision of LIC-101	NRR DORL	Status Report	5/23/07
NRC-07-Q1-06	Give feedback to LATF on endorsement options available for NEI 06-02	NRR DORL	Status Report	5/23/07
NRC-07-Q1-07	Give update on NRR licensing metrics	NRR DORL	Status Report	5/23/07
NRC-07-Q1-08	Confirm date of next quarterly meeting	NRR DORL	Murphy advise Schoppman Frumkin now coordinating for NRC; next meeting scheduled 5/23/07.	COMPLETE

LATF ACTION ITEMS

NEI Action Items from NRC/NEI meetings

NEI-YR-QTR-#	TOPIC	OVERSIGHT	ACTION	DUE DATE
NEI-07-Q1-01	Resource Management: NEI, Exelon, and Entergy meet with NRC to discuss typical licensee practices when planning and budgeting for future licensing submittals	LAR Team	Schoppman Contact Dan Frumkin (NRR) to schedule a public meeting.	6/1/07
NEI-07-Q1-02	Issue Management: WHITE PAPER (coordinate with Houghton)	GIM Team	NEI submit draft WP to NRC: a. Status reports at NRC/NEI LATF meetings b. NEI submit WP	a. 07/26/07 b. 8/15/07
NEI-07-Q1-03	Pandemic Licensing Plan: a. TELECON - discuss date/agenda for a meeting to hear initial NRC comments on the NEI pandemic white paper submitted on January 17, 2007. b. Submit WP Revision 1 incorporating NRC comments	Pandemic Team	a. Schoppman call Peters to discuss meeting agenda and possible dates Public meeting held on 3/23/07. NEI is revising the WP. COMPLETE b. Schoppman coordinate with Pandemic Team to set date for submitting Rev 1.	a. Complete per 3/23/03 meeting b. 6/8/07 provide date for Rev. 1 submittal
NEI-07-Q1-04	Topical Report Process: (1) NEI LETTER - comments on LIC-500 (2) MEETING - schedule next NRC/NEI meeting on TR process improvement	Topical Report Team	(1) NEI submit comments on LIC 500 (2) Schoppman contact Stacey Rosenberg to schedule a meeting	(1) 7/26/07 (2) 6/1/07
NEI-07-Q1-05	First-of-a-Kind White Paper: WHITE PAPER	FOAK Team	NEI submit draft WP to NRC	3rd Qtr 2007
NEI-07-Q1-06	LATF Interface with NRC: NRR "CHARTER"	LATF Steering Group	Provide comments on NRR's draft charter entitled, "NRR's Interactions with NEI LATF"	COMPLETE 5/23/07
NEI-07-Q2-07	Agenda for NEI Licensing Forum a. Draft agenda b. Final draft agenda	NEI	a. Schoppman provide 1 st draft to Lubinski b. NRC/NEI concur on final draft	a. 6/1/07 b. 7/1/07

LATF ACTION ITEMS

NRC Action Items from NRC/NEI meetings

NEI-YR-QTR-#	TOPIC	OVERSIGHT	ACTION	DUE DATE
NRC-07-Q1-01	Develop a "charter" to describe the NRC interface with the NEI LATF	NRR DORL	Status Report	COMPLETE 5/23/07
NRC-07-Q1-02	Consider using the quarterly LATF meetings to advise industry of pending generic communications.	NRR DPR	C. Jackson to consider re-posting a page on the NRC website; possibly under "Operating Reactor Licensee Toolkit" http://www.nrc.gov/reactors/operating/op-reactor-toolkit.html Status report at July LATF meeting	7/25/07
NRC-07-Q1-03	Consider performing a self-assessment of the NRC acceptance review process.	NRR DORL	Status Report	7/26/07
NRC-07-Q1-04	Consider ways to provide electronic copies of approved amendments.	NRR DORL	Pilot underway with Exelon. Continue status reports at LATF quarterly meetings. Communicate final results of pilot 11/07.	November 2007
NRC-07-Q1-05	Consider requesting stakeholder comments on the next revision of LIC-101	NRR DORL	NRC will entertain industry comments on LIC-101 Rev 4 after it is published.	COMPLETE 5/23/07
NRC-07-Q1-06	Give feedback to LATF on endorsement options available for NEI 06-02	NRR DORL	Status Report	Feb 2008
NRC-07-Q1-07	Give update on NRR licensing metrics	NRR DORL	Lubinski status report at 5/23/07 meeting.	COMPLETE 5/23/07
NRC-07-Q1-08	Confirm date of next quarterly meeting	NRR DORL	Frumkin now coordinating for NRC; confirm next meeting scheduled 7/25/07.	6/12/07
NRC-07-Q1-09	Operability determinations for operational leakage	NRR DORL	Identify POC for inspector guidance	6/12/07
NRC-07-Q1-10	NUREG-1022 revision	NRR DORL	NRC to determine if this will be revised and get POC and status	7/25/07