

RAS 14970

January 18, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

January 23, 2008 (7:40am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of)
)
AMERGEN ENERGY COMPANY, LLC)
(Oyster Creek Nuclear Generating Station))

Docket No.
50-219-LR

In the Matter of)
)
ENERGY NUCLEAR OPERATIONS, INC.)
(Indian Point Nuclear Generating)
Units 2 and 3))

Docket No.
50-247-LR
and 50-286-LR

In the Matter of)
)
ENERGY NUCLEAR OPERATIONS, INC.)
(Pilgrim Nuclear Power Station))

Docket No.
50-293-LR

In the Matter of)
)
ENERGY NUCLEAR OPERATIONS, INC.)
(Vermont Yankee Nuclear Power Station))

Docket No.
50-271-LR

ANSWER OF THE VERMONT DEPARTMENT OF PUBLIC SERVICE TO
THE PETITION BY NUCLEAR INFORMATION AND RESOURCE SERVICE ET AL
TO SUSPEND LICENSE RENEWAL REVIEWS FOR OYSTER CREEK,
INDIAN POINT, PILGRIM AND VERMONT YANKEE NUCLEAR POWER
PLANTS PENDING INVESTIGATION OF NRC STAFF REVIEW PROCESS AND
CORRECTION OF DEFICIENCIES

Template = SECY-021

SECY-02

On January 3, 2008, Nuclear Information and Resource Service; Jersey Shore Nuclear Watch, Inc.; Grandmothers, Mothers and More for Energy Safety; New Jersey Public Interest Research Group; New Jersey Sierra Club; New Jersey Environmental Federation; Riverkeeper, Inc.; Pilgrim Watch; and the New England Coalition (Petitioners) filed a Petition to Suspend License Renewal Reviews for Oyster Creek, Indian Point, Pilgrim, and Vermont Yankee Nuclear Power Plants Pending Investigation of NRC Staff Review Process and Correction of Deficiencies (Petition) in the above entitled dockets. By order dated January 11, 2008, the Commission set January 18, 2008 as the due date for Answers to the Petition. This filing is the Answer of the Vermont Department of Public Service (Vermont).

Vermont can only speak to the Petition as it relates to Vermont Yankee Nuclear Power Station (Vermont Yankee). Vermont has been concerned with the issues set forth in the Petition since it became aware of the OIG Report, *Audit of the NRC's License Renewal Program*, OIG-07-A-15, September 6, 2007. On December 17, 2007, Vermont sent a letter to the NRC Director of the Division of License Renewal, with a copy to the NRC Project manager for License Renewal, expressing similar concerns to those expressed in the Petition and requesting assurances that the soon to be released Vermont Yankee Final Safety Evaluation (SER) will not suffer from the deficiencies outlined in the OIG Report. A copy of the letter is attached as Appendix A.

Vermont wants the NRC Staff to:

- a. independently verify operating experience including searches of Entergy Nuclear Operations, Inc's. (Entergy) corrective action databases and corrective action program,

- b. thoroughly review past inspection reports,
- c. clearly indicate in the SER when the NRC Staff is quoting the license application or GALL report, and
- d. provide an independent basis for its conclusions separate from those of the applicant.

The failure to conduct independent reviews and other shortcomings delineated in the OIG Report and the Petition must not be allowed to be continued in the NRC Staff review or the SER prepared in this proceeding. If these shortcomings are not corrected for the this proceeding, the citizens of Vermont will be deprived of their right to have a thorough, independent and objective review by the NRC Staff conducted before any decision is made on the proposal to renew the Vermont Yankee operating license and their right to have the details of that review fully explicated in the SER. Vermont is troubled that by virtue of Vermont Yankee being in the license renewal process at this point in time, the license renewal review for Vermont Yankee may suffer from the deficiencies outlined in the OIG Report but not benefit from the remedies proposed by the NRC Staff presented in its responsive letter of October 30, 2007. A copy of the NRC Staff response is attached as Appendix B. Most of the corrective actions proposed by NRC Staff will not be completed until the end of April or even September, 2008. In the meantime, OIG "anticipates" that NRC Staff will incorporate the report-writing guidance in pending license renewal applications¹. Vermont also anticipates the NRC Staff will have to review the SER for VY to institute improvements prior to its issuance, and we encourage that review. More importantly, NRC Staff will have to not only review the

¹ Memo of January 7, 2008 from Stephen Dingbaum, Assistant Inspector General for Audits, to Luis Reyes, Executive Director for Operations re Status of Recommendations: Audit of NRC's License Renewal Program (OIG-07-A-15). Attached as Appendix C.

SER but the process and underlying work that leads to that ultimate document. Vermont wants action now to ensure that before the SER is issued for Vermont Yankee, the license renewal review process has been of sufficient high quality that the public can rely upon it and that the details of that review and how it was conducted are fully reported.

Under current NRC regulations, particularly the provisions of 10 C.F.R. Sections 54.30, 54.33 and 54.35, significant issues of safety importance that must be resolved prior to a decision being made on a proposal to renew a license, are, if certain conditions are met, explicitly excluded from the license renewal hearing process and left solely as the responsibility of the NRC Staff. Thus, unless the NRC Staff has in fact conducted the thorough, independent and objective review of the license renewal proposal mandated by the regulations and requested in our letter of December 17, 2007, there would be no basis for a finding that allowing Vermont Yankee to operate for an additional 20 years beyond its original license term would not be "inimical to the common defense and security or to the health and safety of the public" (42 U.S.C. Section 2133(d)) and no basis to find that such license renewal will provide reasonable assurance of adequate protection of the public health and safety.

In short, because the Commission regulations, by design, place an enormous responsibility on the NRC Staff, for which no effective public review, such as through public hearings, is possible, the obligation on the NRC Staff to fulfill its safety review thoroughly, independently and objectively is even more vital. In addition, because a significant portion of the Staff safety evaluation work is not open to public hearing scrutiny, it is all the more important that the SER produced by the NRC Staff fully explicates all of its analyses and the bases for its conclusions, including all assumptions

used and the basis for those assumptions, and fully explains how the NRC Staff had, in fact, conducted a thorough, independent and objective review of all relevant safety issues and all submittals by the applicant. The need for this total disclosure and transparency is made all the more important by the disturbing findings in the OIG Report and the absence of details from the NRC Staff on how it intends to address those problems.

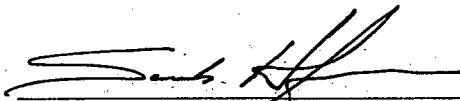
In addition to the people of Vermont needing a thorough, independent and objective review of the license renewal application for Vermont Yankee, the parties involved in the Vermont Yankee case before the Atomic Safety and Licensing Board (ASLB), including the applicant, need to know that the material presented in the SER is reliable and final. It would be a waste of resources if a deficient SER were issued for Vermont Yankee that later needed correction or supplementation further into the ASLB process. The parties need to rely on the information presented not only in the application but in the SER to have a full and fair vetting of the contentions before the tribunal. The SER cannot be a moving target or the legal process will be thwarted in a way that could require repetition of stages of litigation.

We realize that the NRC Staff may have to delay release of the SER in this proceeding in order to assure that it has conducted the thorough, independent and objective safety review mandated by the statute and regulations. However, since the applicant has been diligent in filing its application for renewal well before the date on which the current license will expire, there is sufficient time to assure that the NRC Staff safety review is done properly and, depending upon the outcome of that review and hearing process, sufficient time for applicant and relevant state agencies to take whatever actions are required in light of the final decision on the application. Certainly, the goal of

providing reasonable assurance of adequate protection for the public health and safety is more important than meeting scheduling goals.

In conclusion, Vermont seeks a decision by the Commission directing the NRC Staff to issue its SER in this proceeding only after it has identified and remedied the problems identified by the OIG and has implemented the necessary corrective actions as part of the NRC Staff safety evaluation for the Vermont Yankee license renewal process. Vermont believes it would be a grave mistake, which compromises public health and safety and the rights of all the residents of Vermont, if the NRC Staff were to issue an SER in this proceeding that is in any respect less compliant with the NRC Staff obligations than the OIG, the statute and the regulations mandate. The first, and only priority for NRC Staff in this proceeding, should be to complete a thorough, independent and objective safety evaluation that is thoroughly documented in the SER and that does not suffer from any of the deficiencies identified by the OIG Report.

Respectfully Submitted,



Sarah Hofmann
Director for Public Advocacy
Vermont Department of Public Service

Anthony Z. Roisman, Esq.
National Legal Scholars Law Firm
Counsel for Vermont Department of Public Service

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
ENTERGY NUCLEAR VERMONT YANKEE,) Docket No. 50-271-LR
LLC, and ENTERGY NUCLEAR)
OPERATIONS, INC.) ASLBP No. 06-849-03-LR
)
(Vermont Yankee Nuclear Power Station))

CERTIFICATE OF SERVICE

I hereby certify that copies of the Vermont Department of Public Service Answer to the Petition by Nuclear Information and Resource Service et al. to Suspend License Renewal Reviews For Oyster Creek, Indian Point, Pilgrim and Vermont Yankee Nuclear Power Plants Pending Investigation of NRC Staff Review Process and Correction of Deficiencies has been served on the following by U.S. Mail, first class, postage prepaid, on this 18th day of January 2008, and by electronic mail where indicated by an asterisk on this 18th day of January, 2008. Additionally, the filing has been sent electronically to the parties and the judges in Dockets 50-219-LR, 50-247-LR, 50-286-LR, and 50-293-LR.

*Administrative Judge
Alex S. Karlin, Chair
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ask2@nrc.gov

*Administrative Judge
Thomas S. Elleman
Atomic Safety and Licensing Board
5207 Creedmore Road, #101
Raleigh, NC 27612
E-mail: elleman@eos.ncsu.edu

Office of Commission Appellate
Adjudication
Mail Stop: O-16C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: OCAAmail@nrc.gov

*Administrative Judge
Richard E. Wardwell
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: rew@nrc.gov

*Office of the Secretary
Attn: Rulemaking and Adjudications Staff
Mail Stop: O-16C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: hearingdocket@nrc.gov

*Lloyd B. Subin, Esq.
*Mary C. Baty, Esq.
*David E. Roth, Esq.
Office of the General Counsel
Mail Stop o-15 D21
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Email: lbs3@nrc.gov
mcb1@nrc.gov
der@nrc.gov

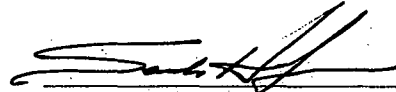
*Ronald A. Shems, Esq.
*Karen Tyler, Esq.
*Andrew Raubvogel, Esq.
Shems Dunkiel Kassel & Saunders, PLLC
91 College Street
Burlington, VT 05401
E-mail: rshems@sdkslaw.com
Ktyler@sdkslaw.com
araubvogel@sdkslaw.com

*Marcia Carpentier, Esq.
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: mx7@nrc.gov

*Peter C.L. Roth, Esq.
Office of the Attorney General
33 Capitol Street
Concord, NH 03301
Email: peter.roth@doj.nh.gov

*Anthony Z. Roisman, Esq.
National Legal Scholars Law Firm
84 East Thetford Rd.
Lyme, NH 03768
E-mail: aroisman@nationallegalscholars.com

David R. Lewis, Esq.*
Matias F. Travieso-Diaz
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037-1128
E-mail: david.lewis@pillsburylaw.com
matias.travieso-diaz@pillsburylaw.com



Sarah Hofmann, Director for Public Advocacy
Vermont Department of Public Service



State of Vermont
Department of Public Service
112 State Street
Drawer 20
Montpelier, VT 05620-2601
TEL: 802-828-2811

FAX: 802-828-2342
TTY VT: 800-734-8390
email: vt dps@state.vt.us
<http://publicservice.vermont.gov/>

December 17, 2007

U.S. Nuclear Regulatory Commission
Attn: Mr. Pao-Tsin Kuo
Director, Division of License Renewal
Mail Stop 011F1
11555 Rockville Pike
Rockville, MD 20852

SENT VIA FACSIMILIE: 301-415-2002

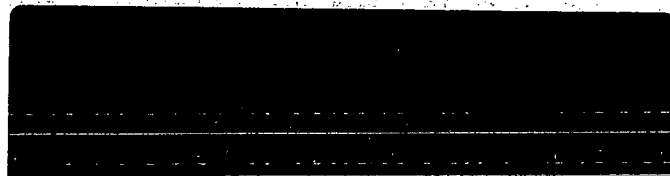
Re: Vermont Yankee Nuclear Power Station Final Safety Evaluation Report

Dear Mr. Pao-Tsin Kuo:

It is my understanding that the Final Safety Evaluation Report ("FSER") for the proposed license extension of the Vermont Yankee Nuclear Power Station will be issued this month. My staff and I have reviewed the Audit Report from the Office of the Inspector General issued on September 6, 2007 (OIG-07-A-15) regarding the NRC's License Renewal Program. The report raised a red flag for Vermont in terms of the quality of the upcoming FSER. I am contacting you before the FSER is issued to ask that you review the FSER prior to issuance to ensure that the problems discussed in the Audit Report are not inherent in the FSER for Vermont Yankee.

Specifically, I would like assurance that the NRC Staff in its review, independently verified licensee supplied operating experience and have not simply relied on Entergy's reporting. Vermont considers operating experience a critical factor in looking at license renewal. I would like to know that NRC Staff conducted independent searches of Entergy VY's corrective action databases and reviewed Vermont Yankee's corrective action program. Additionally, that Entergy's past inspection reports were thoroughly reviewed.

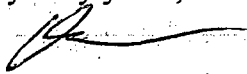
In terms of the report itself, Vermonters need to see the basis for the conclusions reached by NRC Staff. The Audit Report gave examples of the language in the FSER simply mirroring what the licensee put in its license renewal application which in term was taken from the GALL Report. Vermont wants to rely on the NRC Staffs' work as an independent look at the issue of license renewal and not as a parroting of the application. In cases where the license application is being quoted, we would like that material to be clearly delineated so a Vermont reader can differentiate what is NRC's independent analysis and what comes from a licensee.



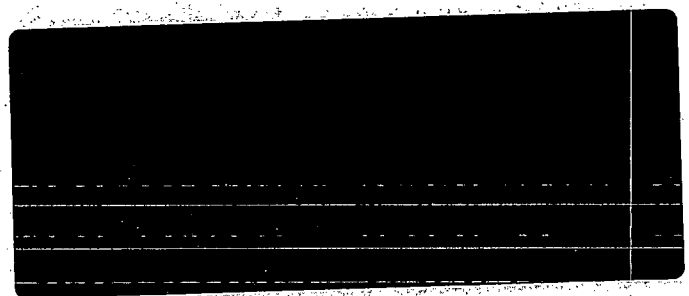
I very much appreciate your review of the FSER prior to release to deal with the troubling issues brought out by the Audit Report. Your agency is key to ensuring that license renewal is granted only to those plants that are safe and to providing the public a report that clearly shows the NRC analysis in reaching its conclusion.

Please feel free to call me if you have questions about this letter.

Very truly yours,


David O'Brien, Commissioner
Vermont Department of Public Service

cc: Jonathan Rowley, NRC Project Manager for License Renewal
Honorable Governor James Douglas
Honorable Senate Pro Tem Peter Shumlin
Honorable Speaker Gaye Symington



October 30, 2007

MEMORANDUM TO: Stephen D. Dingbaum
Assistant Inspector General for Audits

FROM: William F. Kane /RA/
Deputy Executive Director for Reactor
and Preparedness Programs
Office of the Executive Director for Operations

SUBJECT: AUDIT OF NRC'S LICENSE RENEWAL PROGRAM (OIG-07-A-15)

This responds to your memorandum transmitting your report, "Audit of NRC's License Renewal Program," dated September 6, 2007. With respect to your specific recommendations, I submit the following:

Recommendation 1

Establish report-writing standards in the *Project Team Guidance* for describing the license renewal review methodology and providing support for conclusions in the license renewal reports.

Response

Agree. The staff will update report-writing guidance to include management expectations and report-writing standards. The staff will complete the update by April 30, 2008.

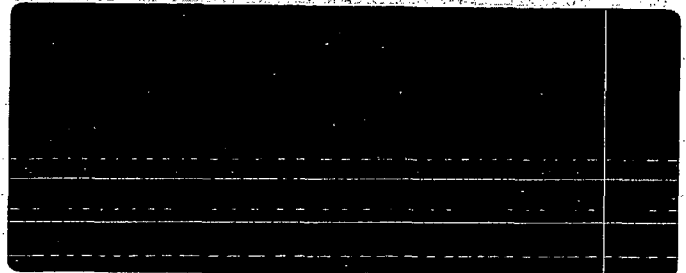
Recommendation 2

Revise the report quality assurance process for license renewal report review to include:

- establishing management controls for Nuclear Reactor Regulation and Division of License Renewal management to gauge the effectiveness of team leader and peer group report reviews, and
- implementing procedures that would specify additional report quality assurance steps to be taken in the event that the team leader and peer group report reviews fail to ensure report quality to management's expectations.

Response

Agree. The staff will enhance the report review process to enable peer reviewers to verify that staff reports meet management expectations. The process will include a method to gauge the effectiveness of the team leader review and the peer group review. The process will also define actions to take if these reviews do not meet management expectations. The staff will implement the report quality assurance process by April 30, 2008.



Recommendation 3

Clarify guidance and adjust procedures for auditors' and inspectors' removal of licensee-provided documents from license renewal sites.

Response

Agree. The license renewal staff will work with the inspection program staff and the Office of the General Counsel to develop consistent guidance for removal of applicant/licensee documents from applicant/licensee sites. The staff will update the guidance by September 30, 2008.

Recommendation 4

Establish requirements and management controls to standardize the conduct and depth of license renewal operating experience reviews.

Response

Agree. The staff will provide additional guidance and management controls to standardize the conduct and depth of license renewal operating experience reviews. The staff will establish controls to standardize reviews by April 30, 2008.

Recommendation 5

Expedite completion of the details for a revised Inspection Procedure (IP) 71003.

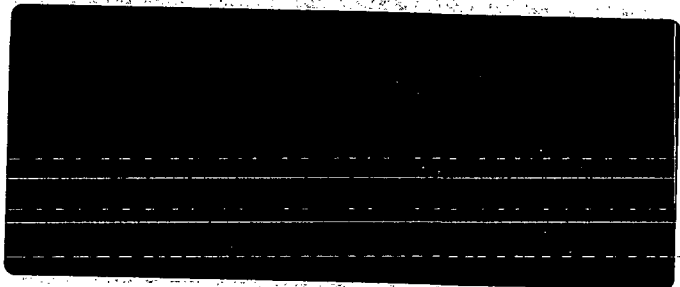
Response

Agree. The staff has already identified the need to update IP 71003, "Post-Approval Site Inspection for License Renewal," dated December 9, 2002 (ML023570192). Revision began in the summer of 2006 and substantial progress has been made since that time. In November 2006, the staff sent the initial draft revision of IP 71003 to stakeholders in each of the U.S. Nuclear Regulatory Commission (NRC) regional offices for comments, and on April 3, 2007, held an NRC working group meeting with participation by representatives from all four regional offices. In August 2007, the staff completed a draft of the IP revision.

On August 9, 2007, the staff provided the draft of the revised IP 71003 to the Nuclear Energy Institute (NEI) and other stakeholders for their comments. The revision includes details regarding the scope, timing, and resource determinations of inspections. We expect to issue the final revised IP 71003 by June 2008, in time for the first plants going into the period of extended operation in 2009.

Recommendation 6

Communicate the details of revised Inspection Procedure 71003 to all applicable staff and stakeholders.



Response

Agree. Communications with stakeholders are part of our process. On April 3, 2007, the staff held an NRC working group meeting with participation by representatives from all four regional offices and NRR's Division of Inspection and Regional Support to discuss the initial draft revision of IP 71003. On August 9, 2007, the staff provided the draft of the revised IP 71003 to NEI and other stakeholders for their comments. The staff will address comments and expects to issue the final revised IP 71003 by June 2008.

Recommendation 7

Establish a review process to determine whether or not Interim Staff Guidance (ISG) meets the provisions of 10 CFR 54.37(b), and document accordingly.

Response

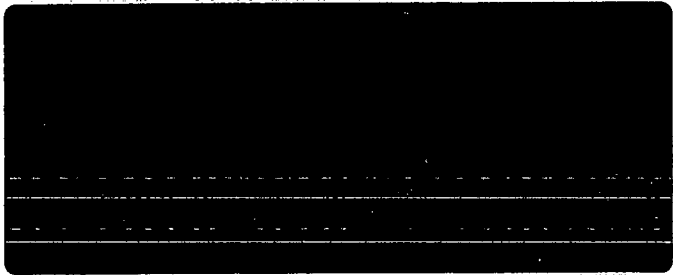
Agree. The staff will enhance the current guidance, "Process for Interim Staff Guidance Development and Implementation," dated December 12, 2003 (ML023520620), to determine and document whether or not ISGs meet the provisions of 10 CFR 54.37(b). The staff will update the ISG guidance by September 20, 2008.

Recommendation 8

OIG recommends that the Commission: Affirm or modify the 1995 Commission's Statement of Considerations position regarding the applicability of the backfit rule to license renewal applicants.

Response

We continue to disagree with the OIG's conclusion regarding the application of the backfit rule in the context of the license renewal process. My July 6, 2007, memorandum providing comments on the draft audit report (ML071770607) provides the basis for the staff's disagreement with this recommendation. We believe the OIG has failed to understand the relevant portions of the license renewal regulation and its Statement of Consideration that noted the basis for the inapplicability of the backfit rule. That basis is that a renewed license is a new license, voluntarily sought by the applicant, and as such, the policies underlying the backfit rule (regulatory predictability and stability) are not implicated for purposes of the license renewal application process. Moreover, the Commission had the opportunity to visit the application of the backfit requirements during a recent license renewal adjudicatory proceeding and held that it was an enforcement matter and not suitable for license renewal adjudication.

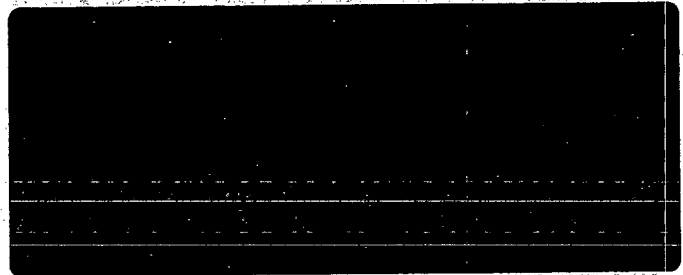


S. Dingbaum

- 4 -

(See, Entergy Nuclear Operations, Inc., (Pilgrim Nuclear Power Station) CLI-06-26, 64 NRC 225 (2006)). In addition, the staff notes that once a renewed license is issued, the plant returns to normal oversight, including applicability of the backfit rule. A change in staff guidance that is not within the scope of 10 CFR 54.37(b), if applicable to a renewed license, would then be subject to the backfit rule, no different than any other change in staff guidance or NRC requirements. Backfit does not apply to prospective license applications.

cc: Chairman Klein
Commissioner Jaczko
Commissioner Lyons
SECY



S. Dingbaum

- 4 -

(See, Entergy Nuclear Operations, Inc., (Pilgrim Nuclear Power Station) CLI-06-26, 64 NRC 225 (2006)). In addition, the staff notes that once a renewed license is issued, the plant returns to normal oversight, including applicability of the backfit rule. A change in staff guidance that is not within the scope of 10 CFR 54.37(b), if applicable to a renewed license, would then be subject to the backfit rule, no different than any other change in staff guidance or NRC requirements. Backfit does not apply to prospective license applications.

cc: Chairman Klein
Commissioner Jaczko
Commissioner Lyons
SECY

DISTRIBUTION: G20070617/EDATS: OEDO-2007-0490

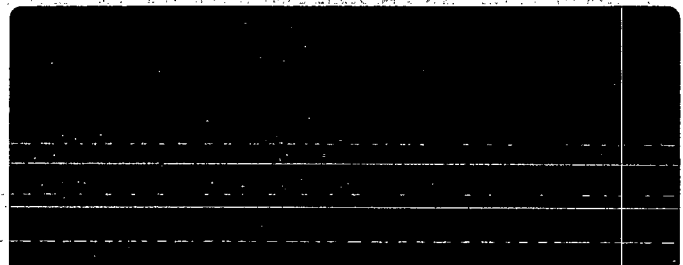
See next page

ADAMS ACCESSION PACKAGE: ML072630295, INCOMING: ML072530083,

RESPONSE: ML072630299 * Concurrence via Email

OFFICE	PM:NRR:DLR:RLRA	LA:NRR:DLR:RLRA	BC:NRR:DLR:RLRA	Tech Editor*
NAME	DWrona	IKing	DWrona for LLund	HChang
DATE	09/21/07	10/16/07	09/21/07	09/21/07
OFFICE	OGC (NLO)	D:DLR:NRR	D:NRR	DEDR
NAME	EWilliamson	SLee for PTKuo	JDyer	WKane
DATE	10/17/07	10/17/07	10/22/07	10/30/07

OFFICIAL RECORD COPY



Memorandum to S. Dingbaum from W. Kane dated October 30, 2007

SUBJECT: AUDIT OF NRC'S LICENSE RENEWAL PROGRAM (OIG-07-A-15)

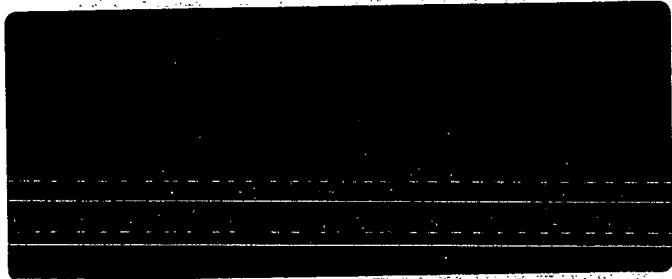
DISTRIBUTION: G20070617/EDATS: OEDO-2007-0490

HARD COPY:

OES R/F
EDO R/F
OIG File

E-MAIL:

RidsEdoMailCenter
RidsOgcMailCenter
RidsNsrOd
RidsNmssOd
RidsNrrOd
RidsNrrAdro
RidsNrrDir
RidsOgcRp
RidsOpaMailCenter
RidsOcaMailCenter
RidsNrrWpcMail
RidsNrrDirRlra
DWrona
MMalloy, OEDO



January 7, 2008

MEMORANDUM TO: Luis A. Reyes
Executive Director for Operations

FROM: Stephen D. Dingbaum **RA**
Assistant Inspector General for Audits

SUBJECT: STATUS OF RECOMMENDATIONS: AUDIT OF NRC'S
LICENSE RENEWAL PROGRAM (OIG-07-A-15)

REFERENCE: DEPUTY EXECUTIVE DIRECTOR FOR REACTOR AND
PREPAREDNESS PROGRAMS MEMORANDUM DATED
OCTOBER 30, 2007

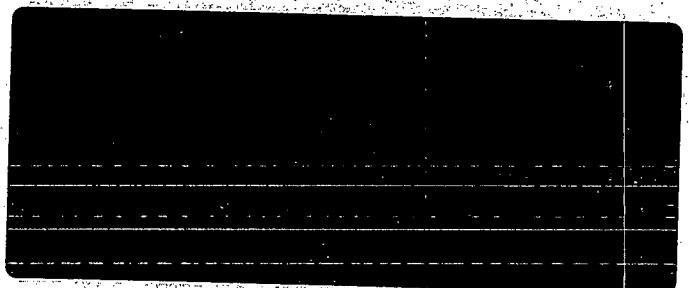
Attached is the Office of the Inspector General's (OIG) analysis and status of the recommendations as discussed in the agency's response dated October 30, 2007. Based on the response, recommendations 1, 2, 3, 4, 5, 6 and 7 are resolved. Please provide an update on the seven resolved recommendations by June 30, 2008.

Recommendation 8 is addressed to the Commission. Therefore, this recommendation will remain unresolved until the Commission provides a response and OIG has an opportunity to analyze that response.

If you have questions or concerns, please call me at 415-5915 or Sherri Miotla at 415-5914.

Attachment: As stated

cc: V, Ordaz, OEDO
M. Malloy, OEDO
P. Tressler, OEDO



Audit Report

Audit of NRC's License Renewal Program OIG-07-A-15

Status of Recommendations

Recommendation 1: Establish report-writing standards in the *Project Team Guidance* for describing the license renewal review methodology and providing support for conclusions in the license renewal reports.

**Agency Response Dated
October 30, 2007:**

Agree. The staff will update report-writing guidance to include management expectations and report-writing standards. The staff will complete the update by April 30, 2008.

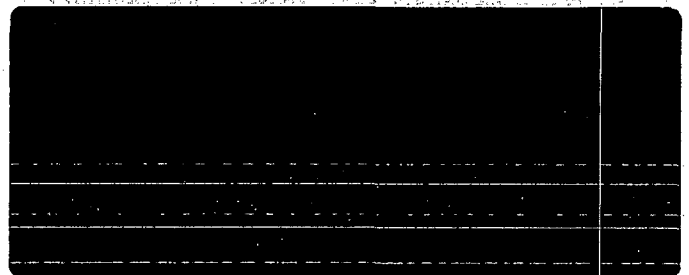
OIG Analysis:

The proposed corrective action to update report-writing guidance addresses the intent of OIG's recommendation and the April 2008 date to finalize the guidance is not unreasonable. OIG notes, however, that there currently are eight license renewal safety evaluation reports planned for issuance between now and April 2008. Given that the agency has been aware of OIG's recommendations since May 24, 2007, OIG anticipates that NRC management's expectations and report-writing standards, while not finalized in guidance form until April 2007, will be reflected in license renewal audit, inspection, and safety evaluation reports issued henceforth.

OIG will close Recommendation 1 upon receipt and review of the revised report-writing guidance to ensure the final product satisfies the recommendation.

Status:

Resolved.



Audit Report

Audit of NRC's License Renewal Program OIG-07-A-15

Status of Recommendations

Recommendation 2:

Revise the report quality assurance process for license renewal report review to include:

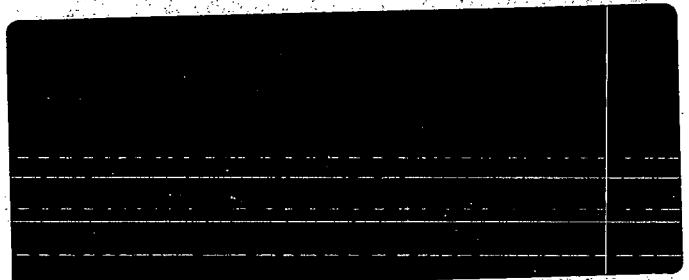
- establishing management controls for Nuclear Reactor Regulation and Division of License Renewal management to gauge the effectiveness of team leader and peer group report reviews, and
- implementing procedures that would specify additional report quality assurance steps to be taken in the event that the team leader and peer group report reviews fail to ensure report quality to management's expectations.

Agency Response Dated October 30, 2007:

Agree. The staff will enhance the report review process to enable peer reviewers to verify that staff reports meet management expectations. The process will include a method to gauge the effectiveness of the team leader review and the peer group review. The process will also define actions to take if these reviews do not meet management expectations. The staff will implement the report quality assurance process by April 30, 2008.

OIG Analysis:

The proposed corrective action addresses the intent of OIG's recommendation and, similar to our response to Recommendation 1, the April 2008 date to formally implement the quality assurance process is acceptable. NRC is currently reviewing 10 license renewal applications, with 2 more expected during the first half of 2008. Therefore, OIG emphasizes the importance of implementing elements of the quality assurance process through interim guidance to team leaders and peer reviewers. Such interim guidance issued in a timely manner should enhance quality assurance for those reports expected to be issued prior to the proposed April 2008 completion date.



Audit Report

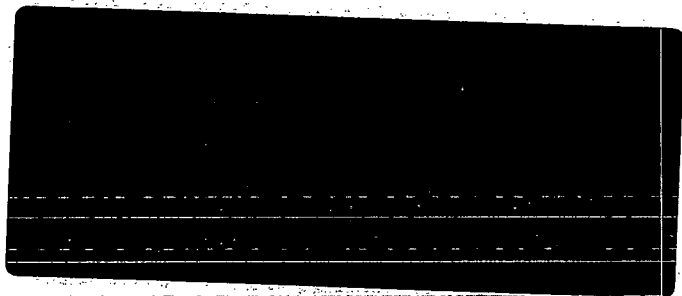
**Audit of NRC's License Renewal Program
OIG-07-A-15**

Status of Recommendations

Recommendation 2 will be closed when the agency submits, and OIG reviews, a finalized updated process to determine that the intent of this recommendation has been satisfied.

Status:

Resolved.



Audit Report

Audit of NRC's License Renewal Program OIG-07-A-15

Status of Recommendations

Recommendation 3: Clarify guidance and adjust procedures for auditors' and inspectors' removal of licensee-provided documents from license renewal sites.

**Agency Response Dated
October 30, 2007:**

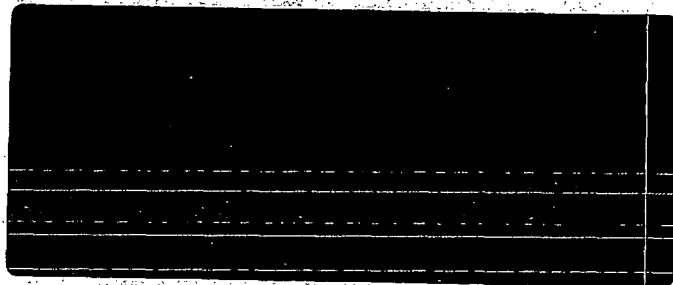
Agree. The license renewal staff will work with the inspection program staff and the Office of the General Counsel to develop consistent guidance for removal of applicant/licensee documents from applicant/licensee sites. The staff will update the guidance by September 30, 2008.

OIG Analysis:

The staff's proposal to develop consistent guidance meets the intent of OIG's recommendation; however, the completion date for updating the guidance is unreasonably long given the multiple license renewal applications currently under review. Unless management steps in to ensure a timelier update to the guidance, the inconsistent treatment of applicant/licensee documents between the audit and inspection staffs is perpetuated. Therefore, until such guidance is finalized, OIG requests that management implements interim guidance to ensure that staff auditors and inspectors are subject to consistent guidelines with regard to the removal of licensee-provided documents from license renewal sites.

Status:

Resolved.



Audit Report

**Audit of NRC's License Renewal Program
OIG-07-A-15**

Status of Recommendations

Recommendation 4:

Establish requirements and management controls to standardize the conduct and depth of license renewal operating experience reviews.

**Agency Response Dated
October 30, 2007:**

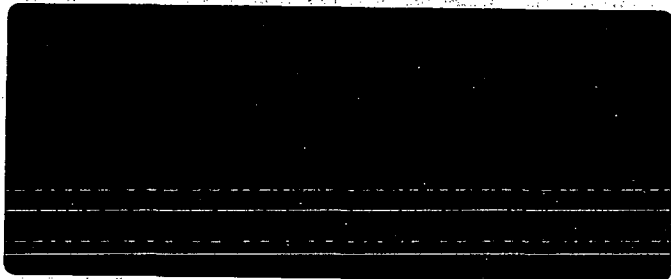
Agree. The staff will provide additional guidance and management controls to standardize the conduct and depth of license renewal operating experience reviews. The staff will establish controls to standardize reviews by April 30, 2008.

OIG Analysis:

The agency's proposed corrective action meets the intent of OIG's recommendation. Recommendation 4 will be closed when NRC provides evidence that its revised operating experience review guidance is issued and implemented.

Status:

Resolved.



Audit Report

Audit of NRC's License Renewal Program OIG-07-A-15

Status of Recommendations

Recommendation 5:

Expedite completion of the details for a revised Inspection Procedure (IP) 71003.

**Agency Response Dated
October 30, 2007:**

Agree. The staff has already identified the need to update IP 71003, "Post-Approval Site Inspection for License Renewal," dated December 9, 2002 (ML023570192). Revision began in the summer of 2006 and substantial progress has been made since that time. In November 2006, the staff sent the initial draft revision of IP 71003 to stakeholders in each of the U.S. Nuclear Regulatory Commission (NRC) regional offices for comments, and on April 3, 2007, held an NRC working group meeting with participation by representatives from all four regional offices. In August 2007, the staff completed a draft of the IP revision.

On August 9, 2007, the staff provided the draft of the revised IP 71003 to the Nuclear Energy Institute (NEI) and other stakeholders for their comments. The revision includes details regarding the scope, timing, and resource determinations of inspections. We expect to issue the final revised IP 71003 by June 2008, in time for the first plants going into the period of extended operation in 2009.

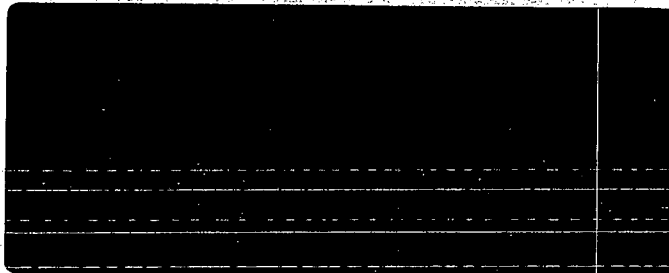
OIG Analysis:

The agency's proposed corrective action meets the intent of OIG's recommendation. However, given that revisions to IP 71003 began nearly 2 years ago, OIG is cautiously optimistic that the staff will meet its proposed June 2008 completion date.

OIG will close Recommendation 5 when NRC provides evidence that a revised IP 71003 has been finalized and issued.

Status:

Resolved.



Audit Report

Audit of NRC's License Renewal Program OIG-07-A-15

Status of Recommendations

Recommendation 6:

Communicate the details of revised Inspection Procedure 71003 to all applicable staff and stakeholders.

**Agency Response Dated
October 30, 2007:**

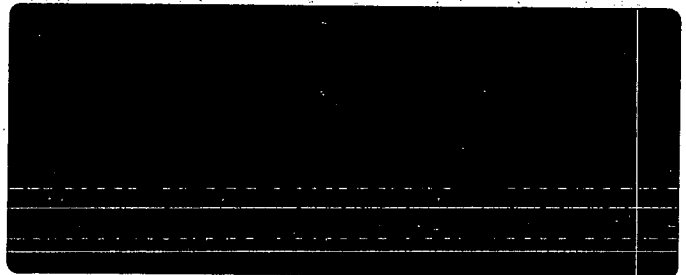
Agree. Communications with stakeholders are part of our process. On April 3, 2007, the staff held an NRC working group meeting with participation by representatives from all four regional offices and NRR's Division of Inspection and Regional Support to discuss the initial draft revision of IP 71003. On August 9, 2007, the staff provided the draft of the revised IP 71003 to NEI and other stakeholders for their comments. The staff will address comments and expects to issue the final revised IP 71003 by June 2008.

OIG Analysis:

The agency's proposed corrective action meets the intent of this recommendation. OIG will close Recommendation 6 when NRC provides evidence that a revised IP 71003 has been appropriately communicated to all applicable staff and stakeholders.

Status:

Resolved.



Audit Report

Audit of NRC's License Renewal Program OIG-07-A-15

Status of Recommendations

Recommendation 7: Establish a review process to determine whether or not Interim Staff Guidance (ISG) meets the provisions of 10 CFR 54.37(b), and document accordingly.

**Agency Response Dated
October 30, 2007:**

Agree. The staff will enhance the current guidance, "Process for Interim Staff Guidance Development and Implementation," dated December 12, 2003 (ML023520620), to determine and document whether or not ISGs meet the provisions of 10 CFR 54.37(b). The staff will update the ISG guidance by September 20, 2008.

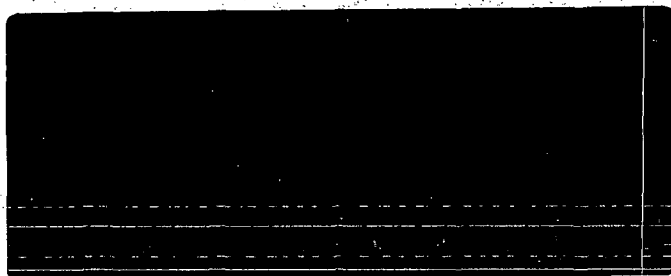
OIG Analysis:

The staff's plan to enhance the current guidance meets the intent of this recommendation. However, given that the guidance will not be formally updated until at least September 2008, OIG cautions the agency to carefully review any ISGs issued during the months preceding the update to ensure compliance with 10 CFR 54.37(b).

Recommendation 7 will be closed upon OIG's receipt and review of the enhancements to the ISG guidance to ensure the intent of this recommendation was met.

Status:

Resolved.



Audit Report

Audit of NRC's License Renewal Program OIG-07-A-15

Status of Recommendations

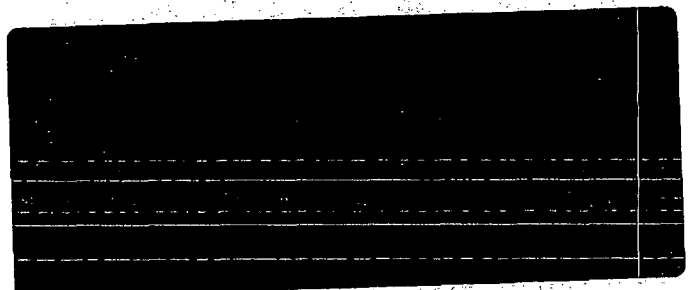
Recommendation 8:

OIG recommends that the Commission: Affirm or modify the 1995 Commission's Statement of Considerations position regarding the applicability of the backfit rule to license renewal applicants.

**Agency Response Dated
October 30, 2007:**

We continue to disagree with the OIG's conclusion regarding the application of the backfit rule in the context of the license renewal process. My July 6, 2007, memorandum providing comments on the draft audit report (ML071770607) provides the basis for the staff's disagreement with this recommendation. We believe the OIG has failed to understand the relevant portions of the license renewal regulation and its Statement of Consideration that noted the basis for the inapplicability of the backfit rule. That basis is that a renewed license is a new license, voluntarily sought by the applicant, and as such, the policies underlying the backfit rule (regulatory predictability and stability) are not implicated for purposes of the license renewal application process. Moreover, the Commission had the opportunity to visit the application of the backfit requirements during a recent license renewal adjudicatory proceeding and held that it was an enforcement matter and not suitable for license renewal adjudication.

(See, Entergy Nuclear Operations, Inc., (Pilgrim Nuclear Power Station) CLI-06-26, 64 NRC 225 (2006)). In addition, the staff notes that once a renewed license is issued, the plant returns to normal oversight, including applicability of the backfit rule. A change in staff guidance that is not within the scope of 10 CFR 54.37(b), if applicable to a renewed license, would then be subject to the backfit rule, no different than any other change in staff guidance or NRC requirements. Backfit does not apply to prospective license applications.



Audit Report

**Audit of NRC's License Renewal Program
OIG-07-A-15**

Status of Recommendations

OIG Analysis:

OIG appreciates the staff's response to this recommendation. However, given that the recommendation is addressed to the Commission, OIG will withhold its analysis until a response from the Commission is received.

Status:

Unresolved.

