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RULES AND DIRECTIVES
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Chief, Rulemaking, Directives and Editing Branch,
Division of Administrative Services, Office of Administration
U. S. Nuclear Regulatory Commission
Mail Stop T6-D59
Washington, DC 20555-0001

Subject: Comments on Proposed NRC Regulatory Information Summary 2007-26,
*Implementation of Certificate of Compliance Amendments to Previously
Loaded Spent Fuel Storage Casks*
Arkansas Nuclear One – Units 1 and 2
Docket Nos. 50-313, 50-368, and 72-13
License Nos. DPR-51 and NPF-6

Dear Sir or Madam:

By publication in the January 14, 2008 Federal Register (73FR2281), the NRC issued for public comment a proposed regulatory information summary (RIS), *Implementation of Certificate of Compliance Amendments to Previously Loaded Spent Fuel Storage Casks*. As an ISFSI general licensee, Entergy Operations appreciates the opportunity to provide comments on the proposed RIS, these comments are included as Attachment 1.

Overall, Entergy's position is that RIS 2007-26 should not be issued and the NRC should endorse the current industry practice. As outlined in Attachment 1, the current 10 Part 72 regulations, as written, are internally consistent and permit the current practice of implementing Certificate of Compliance (CoC) amendments for previously loaded casks. If the RIS is issued as currently worded, it will create significant inconsistencies in the application of 10 CFR Part 72 regulations and would result in the significant expenditure of NRC and licensee resources with no safety benefit.

There are no new commitments contained in this submittal.

If you have any questions concerning this submittal or Entergy Operations' storage of spent fuel under the general license, please contact Stephenie Pyle at (479) 858-4704.

SUNSF Review Complete
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ERFDS = ADM-03
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Sincerely,



DEJ/SLP

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Attachment 1

Comments on Proposed NRC Regulatory Information Summary 2007-26,
*Implementation of Certificate of Compliance Amendments to Previously Loaded Spent
Fuel Storage Casks*

Comment 1

Section 133 of the Nuclear Waste Policy Act (NWPA) of 1982 states, in part, "the Commission shall, by rule, establish procedures for licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear reactor." As discussed in NUREG-1571, the purpose of this directive was to establish acceptable dry cask storage system (DCSS) designs that preclude the need for additional site-specific reviews, because these DCSS designs would be safe and acceptable at any reactor site in the U.S. Its intent was to allow licensed reactor facilities to omit site-specific evaluations "to the maximum extent practicable."

In July 1990, the NRC revised 10 CFR Part 72 to establish a new Subpart K entitled, *General License for Storage of Spent Fuel at Power Reactor Sites*, and a new Subpart L, *Approval of Spent Fuel Storage Casks*. Subpart K gave all utilities with a 10 CFR Part 50 license a general license that allowed them to store their spent fuel in a DCSS which has received a certificate of compliance (CoC) from the NRC. Subpart L describes the method for DCSS vendors to obtain a CoC and lists DCSS models that have CoCs. As discussed in NUREG-1571, the revision gave utilities the option to reduce licensing time by using an approved DCSS, as intended by the NWPA directive.

Subpart K to 10 CFR Part 72 was established to provide a general license to those utilities with a 10 CFR Part 50 license. This general license allows them to store their spent fuel in a DCSS which has received a certificate of compliance (CoC) from the NRC. As is evident by the NWPA directive the intent was to reduce licensing time. Therefore, it is reasonable to conclude that the authors of 10 CFR Part 72 also intended to omit NRC site-specific evaluations for CoC amendments.

This is supported by 10 CFR 72.48(c)(2) which states, "a general licensee shall request that the certificate holder obtain a CoC amendment pursuant to 72.244, prior to..." Additionally, the provision in 10 CFR 72.212(b)(2)(ii) allows for the 10 CFR 72.212 evaluation to be reviewed under 10 CFR 72.48 and updated to reflect the implementation of a new amendment which was reviewed and approved by the NRC.

Comment 2

The Regulatory Issue Summary (RIS) states that it is the NRC's practice to consider each CoC amendment as a new design basis and that each CoC amendment is considered a separate and distinct CoC, accompanied by its own certificate (setting forth terms, conditions, and specifications) and safety evaluation report (SER). However, the current NRC practice in the review of a license amendment does not support this position. When a license amendment application (LAR) is submitted to the NRC, the NRC does not conduct the review as if it were a new application. Rather, the license amendment presents changes from the previous LAR and subsequently the NRC only reviews the proposed changes and the accompanying SER only addresses the specific changes.

Comment 3

The RIS stated that the RIS provides clarification of 10 CFR Part 72, subparts L and K requirements and that this RIS does not impose a regulatory staff position or interpretation of the Commission's rules that is either new or different from a previously applicable position. The RIS states that under the provisions of 10 CFR 50.109 and 72.62, this RIS does not constitute a backfit. However, the NRC has, through inspection, found the current practice of implementing CoC amendments for previously loaded casks acceptable.

Section 1.2 of Arkansas Nuclear One (ANO) NRC Inspection Report 50-313/02-08; 50-368/02-08; 72-13/02-01, dated September 26, 2002, and ANO NRC Inspection Report 50-313/03-09; 50-368/03-09; 72-13/03-01, dated February 7, 2003, states:

The spent fuel currently in storage at the ANO ISFSI is stored in VSC-24 casks licensed under the general licensing provisions of 10 CFR Part 72. The current Certificate of Compliance in use at ANO for the VSC-24 casks is Certificate No. 1007, Amendment 3, dated May 21, 2001.

This paragraph indicates that all casks are being operated under Amendment 3 to the CoC. However, many of the casks were loaded under earlier amendments prior to the effective date of Amendment 3. ANO had used the 10 CFR 72.48 process to modify their site specific 10 CFR 72.212 evaluation before it began operating the previously loaded casks under Amendment 3. While the inspection reports did not specifically discuss the 10 CFR 72.48 screening that was performed to implement the new amendment, the NRC inspection team recognized that ANO was operating all casks under Amendment 3 without an exemption. The inspection report also documents compliance of all casks, including previously loaded casks, with technical specifications from Amendment 3.

At the time of the last NRC inspection, twenty-three casks had been loaded at ANO and seventeen casks were loaded under earlier amendments. Fourteen casks were originally loaded under Amendment 0, two were loaded under amendment 1 and one cask was loaded under Amendment 2; however, all were being operated under Amendment 3 at the time of the inspection.

ANO NRC Inspection Report 50-313/05-13; 50-368/05-13; 72-13/04-02, dated March 31, 2005:

In the inspection notes on page 16 of 18, in category "Tech Spec Surveillance" and topic "Cask Air Ducts Free of Blockage", CoC 1007, Tech Spec 1.3.1, Rev. 4 is referenced. This technical specification was used during the review of plant records to verify compliance. This reference indicates that all casks are being operated under Amendment 4 to CoC No. 1007. However, many of the casks already loaded at the time of the inspections were loaded prior to the effective date of Amendment 4, February 3, 2003, and therefore loaded under an earlier amendment. ANO had used the 72.48 process to modify their 72.212 evaluation before they began operating the casks under Amendment 4. While the inspection report did not specifically discuss the 72.48 screening that was performed to implement the new amendment, implicitly the

NRC inspection recognized that ANO was operating all casks under Amendment 4 without an exemption.

Comment 4

The proposed RIS, as written, would establish a new 10 CFR 72 regulatory process that would result in the significant expenditure of NRC and licensee resources with no safety benefit and in some cases would actually prohibit the general license from implementing enhanced safety features without additional NRC review. The changes that have been implemented for previously loaded casks have been shown to be safe in the CoC holder's amendment request, verified to be safe in the NRC's safety evaluation, verified to be safe by the general licensee through the 10 CFR 72.48 process, and verified as being implemented safely by the NRC's inspection process. Adding a new requirement for each general licensee to obtain prior site-specific NRC approval in order to implement changes to the CoC that have already been approved by the NRC would provide no safety benefit.

In some cases, the changes that have been implemented for previously loaded casks have resulted in more conservative requirements for casks. If general licensees are required to revert back to the original amendment used for loading or prohibited from applying the CoC amendment changes to previously loaded casks without express NRC approval, there may be conditions where this will result in less conservative requirements. An evaluation of the ANO ISFSI site-specific licensing basis concluded that if ANO were to operate the casks under the original amendment used for loading, this would result in at least seven instances of conflicting licensing bases for the loaded casks, a few of which would be less conservative.

An example of a less conservative requirement is contained in Amendment No. 1 to the CoC for Ventilated Storage Cask (VSC-24) System dated May 7, 1993. In this amendment, the maximum allowable lift height of a ventilated concrete cask (VCC) was reduced from 80 to 60 inches. This specification applies to handling the VCC, loaded with the multi-assembly sealed basket (MSB), on route to, and at, the storage pad. Therefore, if ANO were to operate casks under Amendment No. 0 and Amendment No. 1, the Amendment No. 0 casks would have a greater allowable lift height than the more conservative height implemented in Amendment No. 1.