Union of Concerned Scientists

Citizens and Scientists for Environmental Solutions

July 22, 2008

Joseph Giitter, Director
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: INCOMPLETE RESPONSES TO FIRST ROUND OF SUBMITTALS TO BULLETIN 2007-01, "SECURITY OFFICER ATTENTIVENESS"

Dear Mr. Giitter:

Members of your staff sent requests for additional information to the overwhelming majority, if not the entirety, of operating reactor licensees regarding their submittals provided in response to NRC Bulletin 2007-01, "Security Officer Attentiveness." Among the requests for additional information are the following:

Plant	ADAMS Accession No.	Date
Arkansas Nuclear One	ML081820011	07/10/2008
Beaver Valley	ML081780361	07/10/2008
Braidwood	ML081760527	06/27/2008
Browns Ferry	ML081770660	06/27/2008
Brunswick	ML081790441	06/30/2008
Byron	ML081760527	06/27/2008
Callaway	ML081780333	07/03/2008
Calvert Cliffs	ML081830385	07/09/2008
Catawba	ML081770158	06/25/2008
Clinton	ML081760527	06/27/2008
Columbia Generating Station	ML081820008	07/07/2008
Comanche Peak	ML081780397	06/30/2008
Cook	ML081820859	07/07/2008
Cooper	ML081780383	06/30/2008
Crystal River	ML081790441	06/30/2008
Davis-Besse	ML081820185	07/14/2008
Diablo Canyon	ML081850030	07/10/2008
Dresden	ML081760527	06/27/2008
Duane Arnold	ML081780102	07/01/2008

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Fermi 2	ML081900514	07/11/2008
FitzPatrick	ML081820290	07/09/2008
Fort Calhoun	ML081820005	07/07/2008
Ginna	ML081830460	07/09/2008
Grand Gulf	ML081830009	07/09/2008
Harris	ML081790441	06/30/2008
Hatch	ML081770481	06/27/2008
Hope Creek	ML081830342	07/08/2008
Indian Point	ML081840450	07/08/2008
Kewaunee	ML081770646	06/30/2008
LaSalle	ML081760527	06/27/2008
Limerick	ML081760527	06/27/2008
McGuire	ML081770158	06/25/2008
Millstone	ML081770646	06/30/2008
Monticello	ML081820855	07/07/2008
Nine Mile Point	ML081820069	06/30/2008
North Anna	ML081770646	06/30/2008
Oconee	ML081770158	06/25/2008
Oyster Creek	ML081760527	06/27/2008
Palisades	ML081910557	07/11/2008
Palo Verde	ML081890542	07/08/2008
Peach Bottom	ML081760527	06/27/2008
Perry	ML081820168	07/03/2008
Pilgrim	ML081840435	07/03/2008
Point Beach	ML081780102	07/01/2008
Prairie Island	ML081910532	07/11/2008
Quad Cities	ML081760527	06/27/2008
River Bend	ML081820006	07/09/2008
Robinson	ML081790441	06/30/2008
Salem	ML081830342	07/08/2008
San Onofre	ML081850028	07/10/2008
Seabrook	ML081780102	07/01/2008
Sequoyah	ML081770660	06/27/2008
South Texas Project	ML081900487	07/10/2008
Summer	ML081790171	07/08/2008
Surry	ML081770646	06/30/2008
Susquehanna	ML081820272	07/08/2008
Three Mile Island	ML081760527	06/27/2008
Turkey Point	ML081780102	07/01/2008
Vermont Yankee	ML081790347	07/02/2008
Waterford	ML081780438	06/30/2008
Watts Bar	ML081770660	06/27/2008
Wolf Creek	ML081820004	07/02/2008

The NRC issued Bulletin 2007-01, "Security Officer Attentiveness," on December 12, 2007, requiring licensees to provide answers to five essay questions pursuant to 10 CFR 50.54(f) within 60 days.[1] The bulletin stated that the NRC needed this information in order to determine whether further measures are needed to resolve concerns with the behavior observation programs mandated by 10 CFR 26.

Paragraph (f) of 10 CFR 50.54, "Conditions of licenses," specifies:

> *(f)* ***The licensee shall at any time before expiration of the license, upon request of the Commission, submit, as specified in § 50.4, written statements, signed under oath or affirmation, to enable the Commission to determine whether or not the license should be modified, suspended, or revoked****. Except for information sought to verify licensee compliance with the current licensing basis for that facility,* ***the NRC must prepare the reason or reasons for each information request prior to issuance to ensure that the burden to be imposed on respondents is justified*** *in view of the potential safety significance of the issue to be addressed in the requested information. Each such justification provided for an evaluation performed by the NRC staff must be approved by the Executive Director for Operations or his or her designee prior to issuance of the request.* [emphasis added]

There seem to be two key elements of a 50.54(f) request and response: (1) the response must be submitted under oath or affirmation, and (2) the NRC must ensure that the burden by the request is justified.

Regarding the first element, the responses typically contained an oath or affirmation such as this one taken from the Vermont Yankee response:

> *I declare under penalty of perjury that the contents of this response are true and correct to the best of my knowledge and belief.*

A supplemental requirement for information submitted to the NRC is embodied in paragraph (a) to 10 CFR 50.9, "Completeness and accuracy of information":

> *(a)* ***Information provided to the Commission*** *by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee* ***shall be complete and accurate in all material respects****.* [emphasis added]

Regarding the second element, the NRC documented the justification for the information request in Bulletin 2007-01. Under the section titled "Paperwork Reduction Act Statement," the NRC provided its estimate that the "*time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection*" would average 200 hours per response.

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[1] Nuclear Regulatory Commission, Bulletin 2007-01, "Security Officer Attentiveness," December 12, 2007. ADAMS Accession No. MC073400150.

The numerous requests for additional information raise the following questions:

1. Did the licensees violate regulations, such as 10 CFR 50.9, by submitting incomplete information to the NRC in response to Bulletin 2007-01?

2. What formal process, if any, is employed by NRC to evaluate whether information received from its licensees conform to regulations, such as 10 CFR 50.9? In other words, how does NRC identify a violation it never looks for?

3. Is the information being sought by the NRC via its requests for additional information "material"? If not, why is the NRC seeking immaterial information? If so, why aren't the requests for additional "material" information prima facie evidence that the licensees violated 10 CFR 50.9?

4. Does the fact that the overwhelming majority, if not the entirety, of NRC's operating reactor licensees received requests for additional information reflect that the questions in Bulletin 2007-01 were not clear or otherwise deficient?

5. If the questions in Bulletin 2007-01 were sufficiently clear, did the widespread failures to respond fully to clear questions result from some common-mode failure mechanism, such as the Nuclear Energy Institute providing its members and NRC's licensees with flawed response guidance?

6. If the unclear or deficient questions in Bulletin 2007-01 contributed in whole or in part to the massive requests for additional information, did the NRC revisit its justifications for 10 CFR 50.54(f) and the Paperwork Reduction Act?

7. Was the 200 hours per response estimate specified in Bulletin 2007-01 based on assumed complete and accurate single response, or upon as many responses as necessary to eventually satisfy NRC? If the former, where is the NRC's estimate for the average time required to respond to the requests for additional information?

8. One of the NRC's oft-stated objectives is to reduce unnecessary burden on its licensees. Was this need for massive requests for information consistent with that objective?

In the same time frame as NRC was mailing out reams of requests for additional information, the NRC took enforcement action[2] against an individual for having provided "*inaccurate information to Hatch Nuclear Plant*." Curiously, this individual was not then, nor ever was, an NRC licensee and thus legally obligated under 10 CFR 50.9, 10 CFR 50.54(f), or whatever to provide complete and accurate information. Yet, NRC sanctioned him nevertheless.

[2] Nuclear Regulatory Commission, IA-07-069, "Confirmatory Order (Effective Immediately) NRC Office of Investigations Report No. 2-2006-035 (Hatch Nuclear Plant)," July 3, 2008. ADAMS Accession No. ML081850390.

The apparent inconsistent NRC response to apparently consistent behaviors begs the following questions:

1. How was the Arkansas Nuclear One, Beaver Valley, et al licensees submittal of incomplete information in response to the NRC's 10 CFR 50.54(f) request substantively different than the Hatch guy's submittal of inaccurate information, from the regulatory requirement perspective of having to provide both accurate and complete information?

2. The Hatch guy did not provide inaccurate information to NRC directly; he was sanctioned by NRC because his providing inaccurate information to the licensee caused that licensee to violate NRC's regulations. How is the Hatch guy's situation substantively different from the Arkansas Nuclear One guy's, Beaver Valley guy's, et al guys' situations? They provided information under oath or affirmation, a higher standard that than violated by the Hatch guy.

The actual responses provided by licensees to NRC in response to Bulletin 2007-01 fell into three categories. Submittals representing these three categories are:

Category	Plants	Response
Full disclosure	Exelon fleet (e.g., Braidwood, Byron, Clinton, oh my)	ML080430467: Exelon's submittal provided the answers to all of NRC's questions in nine attachments to the transmittal letter, all publicly available in ADAMS.
	Fermi 2	ML080460551: DTE's submittal provided the answers to all of NRC's questions, all publicly available in ADAMS.
Partial disclosure / cover-up	Callaway	ML080510628: Ameren's submittal provided the answers to all of NRC's questions in attachment 1, all publicly available in ADAMS. In addition, Ameren's submittal had sensitive security information in a second attachment, not publicly available in ADAMS.
	South Texas Project	ML080460553: STP Nuclear Operating Company's

Category	Plants	Response
		submittal provided the answers to all of NRC's questions in attachment 1, all publicly available in ADAMS. In addition, STPNOC's submittal had sensitive security information in a second attachment, not publicly available in ADAMS.
Full cover-up	Vermont Yankee	ML080500263: Entergy may or may not have provided answers to any of NRC's questions; the attachment to the transmittal letter was not publicly available in ADAMS.
	Indian Point	ML080510585: Entergy may or may not have provided answers to any of NRC's questions; the attachment to the transmittal letter was not publicly available in ADAMS.

Thus, the responses ranged from providing publicly-available answers to all of the NRC's questions to providing no publicly-available answers to any of the NRC's questions. And yet, NRC seems perfectly content with both extremes as well as responses somewhere in the middle. This raises the following questions:

1. How can the NRC be satisfied by such disparate responses?

2. If the answer to this question falls along the lines of licensees having freedom to either provide publicly available information or hide behind some sleazy, shady gimmick to hide from the American public their responses,[3] should not the NRC make it a point in future 50.54(f) requests to explicitly require responses that fall into the "full disclosure" or at very least the "partial disclosure" categories? After all, the fact that many licensees were able to do so in this case suggests that the remainder could have done so, too, had they the will.

[3] We recognize that every American has the right to be chicken and that Entergy appears to have more chickens than Tyson Farms.

We are copying the NRC's Inspector General on this letter because, depending on the answers to some of these questions, NRC staff wrong-doing may be involved.

We welcome the NRC's response to these questions, but readily understand that the NRC is not obligated in any way to do so.

Sincerely,

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cc: Hubert Bell, NRC Inspector General