

# **NRC STAFF COMMENTS REGARDING NEI'S WHITE PAPER "REGULATORY ISSUE SCREENING PROCESS"**

The following staff comments are associated with the NEI RISP White Paper:

## **Section 1.0, Introduction**

Operating experience, new technical and engineering information, and licensees reaching the design envelope warrant the staff to be vigilant and question the Current Licensing Basis (CLB) when needed. The staff agrees that the CLB is the starting point for the evaluation of any operating license, or licensing action. This should not be interpreted to mean that a licensing action might not change the licensing basis.

Industry should recognize that technology, the environment, lessons learned, and other factors change, and past precedent may no longer be applicable or may never have been applicable to a specific plant due to plant differences. Operating experience, new information, and re-evaluations of the design envelope warrant the staff to be vigilant and validate the Current Licensing Basis (CLB) when needed. Therefore, licensees should not expect that enforcement of the regulations would remain static in spite of factors affecting the CLB. The NRC ensures the continued safe and secure operation of nuclear power plants.

LIC 109 makes the process more efficient and guides licensees to submit a more complete package. LIC-109 requires that NRC management (i.e., Division Director) review the basis for any application sent back without an opportunity to supplement and NRC management must be informed of any application sent back with an opportunity to supplement. The LIC-109 process should be given an opportunity to work before introducing mediation panels that could slow the process.

In cases where the licensing amendment package is accepted and the licensee feels that they are being "ratcheted" into beyond scope commitments to get the LAR through, the licensee should raise the issue with NRC's plant Project Manager and then to NRC management, if necessary.

The paper states "industry believes that the trend in staffing demographics within the industry and staff is reducing stability and predictability of the licensing process, causing a corresponding increase in the number and duration of disagreements." This does not account for inspection findings as described in the paper abstract, as the paper overall concentrates on licensing actions. Current NRC processes and NRC management involvement ensure stability and predictability in the licensing process. Similar NRC processes and NRC management involvement are equally applicable to the inspection process. The NRC has a comprehensive knowledge management program to ensure there is no reduction in staff predictability during LAR reviews and inspections.

The NRC inspection process ensures timely response to licensees and provides for licensee feedback. All inspection findings or areas of concern are raised through NRC Region management and not decided by any one inspector. Inspection findings should

not be held in abeyance, awaiting a RISP evaluation.

The NRC supports an industry initiative of trending & tracking of various categories of industry and agency disagreements. If submitted to the NRC, the information may be useful.

## **Section 2.0, Problem Statement**

The white paper addresses the desire to consolidate issues, specifically “an issue that affects a significant subset of plants in the same or similar way.” The NRC agrees that any issue the industry finds applicable to a significant subset of plants should be evaluated and validated as to applicability for industry-wide consideration. These issues should be communicated across the industry, a resolution developed, and then brought to the attention of the NRC for consideration. As was found with the current Reactor Oversight Process Frequently Asked Question program, issues need to be discrete and not homogenized in such a way as to introduce inefficiency.

As with the previous Scrams With Loss of Normal Heat Removal Performance Indicator, claims of “generic” were shown to not quite be accurate upon further NRC review. The problem statement acknowledges CLBs are plant-specific, but then continually references generic issues. Given that the CLBs are in fact plant specific, what the industry views as generic may not be taken as a given.

The last paragraph states, “The purpose of this white paper is to initiate a dialogue between the industry and the Staff to develop a process for identifying, managing, and documenting the disposition of industry and Staff disagreements about generic issues.” The staff agrees that increasing stakeholder dialog improves oversight and regulatory involvement. The staff finds processes for identifying, managing, and documenting the disposition of industry and Staff disagreements about generic issues already exist, and licensees can avail them either as an individual licensee or as a group through organizations like NEI, EPRI or a product-manufacturing group.

## **Section 3.0, Examples**

The “ensuing discussions are often adversarial” – the NRC staff does not agree with the word “often.” This appears to be an anecdotal comment, not one that could be defended with analysis.

The white paper specifically acknowledges that there is a “due process” currently available to licensees if they do not agree with an NRC position. The paper states that licensees have been reluctant to use it for reasons including; the outcome is uncertain, and perceived negative impact on “regulatory margin.” There is no objective reason to believe the outcome of a mediation or other facilitation process would be any more “certain” than the current appeal process, unless the details of the implementation of this proposal significantly tips the scales in favor of the licensee. In addition, the perceived impacts should be specifically addressed vice developing a process contrary to basic regulatory principles.

Industry has elected to not utilize established processes to appeal or question staff positions (e.g., backfit claims), and staff believes another process should not be established to replace an unused process, or to replace a process that actually works but may not be to the benefit of industry.

The staff believes from the white paper, that licensees are depending on what they call past precedent without recognizing that technology, lessons learned, and current

regulations change and past precedent may no longer be applicable or was never applicable to their plant due to plant differences. Past precedent decisions may not be applicable in current considerations with regard to any new licensing action. New or additional information allows the NRC to ensure the safety and security of the public.

“.. a disincentive to innovation and the introduction of improved technology because of the uncertain outcome of Staff review.” If a licensee wants to be innovative (implies no precedent) or improve technology, it is in everyone’s best interest to get Staff buy-in or approval (e.g., new codes) before we have to address it on an individual (or “lead”) plant basis.

LIC 109 was created to make the process more efficient in the end and to guide licensees to submit a complete package. LIC-109 requires that the Division Director review the basis for any LAR sent back without opportunity to supplement and the Division Director must be informed of any LARs sent back with an opportunity to supplement. The LIC-109 process should be given an opportunity to work before introducing mediation or facilitation panels that could slow the process.

In cases where the LAR package is accepted by the NRC and the licensee feels they are being ratcheted into beyond scope commitments to get the LAR through, they should raise the issue to their NRC plant Project Manager and then to NRC management, if necessary.

Industry’s key issue here seems to be that they want to ensure that staff reviews are consistent and “represent collective agency conclusions.” The issue that apparently should be addressed is the alleged ineffectiveness of oversight on NRC reviews and decision-making. Besides taking away from the perception of NRC as a strong regulator, it appears that it also would open a path for resolution of issues to be excessively prolonged. Oversight of all staff determinations is and has been an NRC principle, through the involvement of senior managers, either in the Region or in the Offices. Staff does not make independent decisions that affect licensing.

There is no single NRC staff member holding up a process or unilaterally deciding on regulatory interpretations or enforcement. All decisions concerning licensee licensing, inspection findings, and other matters are considered by NRC management.

Nearly all NRC processes afford stakeholders an opportunity to comment or propose changes. NRC evaluates comments and incorporates as appropriate. NRC may have unilateral ability to change a process; however, stakeholder input is evaluated. In addition, the final document (e.g., SER) is an “agency” document, not one particular staff’s position. This process must include all stakeholders and be seen by all stakeholders as a transparent process.

#### **Section 4.0, Process Description**

As stated, the proposed “Regulatory Issue Screening Process (RISP) is a process for identifying and managing plant-specific licensing and compliance issues that have generic implications for the Industry.” A review of NRC Management Directive 6.4, “Generic Issues Program,” revised July 29, 2005, appears to provide similar guidance, e.g., Part II, “Initial Screening: Stage 2,” pages 16-19.

The NRC/NEI Licensing Action Task Force (LATF) already provides the vehicle for some of the actions proposed in this white paper. Creating additional groups such as a RISP team and a mediation panel is adding inefficiencies. The NRC has and continues to support the LATF with senior-level management, while industry does not provide the

same level of support.

There is a concern with conflict of interest with allowing the industry the ability to mediate a regulatory decision. While we do have ADR for enforcement, this is after the regulatory decision on the violation. Overall, the staff is concerned that a mediation process on a regulatory decision would co-opt the NRC as an independent regulator.

As a regulatory body, the NRC does not engage in mediation or arbitration. NRC participation in essentially "binding mediation" is contrary to basic regulatory principles. Additionally, the optic of this type of agreement would have significant ramifications on public perception. The NRC has been, is, and will remain a strong, independent regulator. "The authority to withhold permission" is a fundamental part of NRC's independent oversight responsibility.

The white paper does not acknowledge that licensees and industry organizations (i.e.; NEI) frequently interact with the senior-most levels of NRC management. Oftentimes, these interactions occur before issues are fully dealt with through NRC processes. If licensees have a specific concern regarding NRC staff performance, it is not clear why they would not include that issue in these discussions. Additionally, simple, docketed, correspondence can be used to spur additional regulatory response to specific issues of concern.

The NRC is an independent regulatory body tasked with licensing and oversight responsibilities. Current processes address disagreements between a licensee and the NRC staff. These processes ensure full stakeholder involvement and provide licensees opportunities for dialog with NRC staff and management.

The NRC does not believe it is appropriate to define a process for resolving industry and agency disagreements in an NEI document. Any such process would best be defined in an NRC process or procedure. This would ensure full stakeholder involvement and participation.

## **Section 4.2, RISP Principles**

The paper states "The RISP is designed to improve NRC and Industry efficiency and effectiveness in resolving disagreements about generic issues that are neither safety nor risk significant." NEI has not defined what is or is not risk-significant in the paper.

Presumably, these would simply be compliance issues since that is what the staff addresses. The basic principle of the RISP is then to permit licensees to continue to operate if the issue is not risk significant. This appears to undermine the basic principles by which the NRC regulates. The NRC ensures that plants operate in accordance with regulations. If a licensee is not operating in accordance with regulations, they need to come into compliance or propose changes to the regulations. When a plant is not in compliance and wishes to operate (in the short term), a Notice of Enforcement Discretion should be processed. In essence, it appears the industry's intent with this provision is to obtain approval of their amendment request despite the staff's conclusion that the applicant/licensee has not demonstrated they remain in compliance.

As one of the RISP principles, the paper states, "If the issue is not risk significant, licensees should be permitted to continue operation in accordance with their respective CLBs pending resolution of the generic issue."

The process to allow for continued operation is not fully defined for issues involving TS operability. For example, concerns with the operability of gaseous radiation monitors for RCS leakage detection have existed since at least 2005 (See IN 2005-24), but

industry/NRC efforts on a TSTF to resolve the issue have languished. Now the NRC is evaluating enforcement discretion in conjunction with several exigent license amendment requests until an acceptable TSTF can be developed and approved. An appropriate threshold for risk significance was not proposed. The industry has delayed proposals for resolution.

### **Section 4.3.3, Evaluation**

This section recommends resolution of the issues at public meetings. Such provisions for public meetings are already in practice, and especially, the ACRS meetings critically address them. The LATF is intended to be a public meeting, although attendance by stakeholders other than industry has not been consistent and in fact has been non-existent during recent meetings.

The NRC staff recommends that public meetings be used as intended and in current use.

### **Section 4.3.4, Mediation**

This section suggests provision for mediation, in the event of disagreement, by a panel of one or more individuals that have appropriate expertise and have not been involved in the issue.

First, and foremost, NRC participation in essentially “binding mediation” is contrary to basic regulatory principles. Additionally, the optic of this type of agreement would have significant ramifications on public perception. The NRC has been, is, and will remain a strong, independent regulator. “The authority to withhold permission” is a fundamental part of our independent oversight responsibility.

Giving mediation power to a panel with individual(s) outside the NRC will deprive the NRC of the responsibility entrusted by Congress. However, giving mediation power with individual(s) inside the NRC would resolve it. However, this process currently exists with all NRC processes, both licensing and inspection.

LIC-109 resolves the issue of a mediation panel. If the acceptance reviewer does not like the submittal, staff recommends it be rejected and NRC management is engaged. The NEI paper would impose an independent group to re-evaluate the LIC-109 rejection and the basis for the rejection. This process is already built into the LIC-109 process, and no one individual can reject an LAR.

The white paper describes a process to allow licensees to bring non-risk significant generic issues through a mediation process, and then affords an opportunity for the licensee to use current NRC processes to refute the decision by the mediation panel. This only delays any decision making, when standard NRC processes would have resulted in the same result.

### **Section 4.3.5, Documentation**

This section states, “NRC – The Staff publishes the result of each evaluation or mediation as an “applicable staff position” published in a durable guidance document suitable for licensees to reference or incorporates in the UFSAR as part of the CLB.”

Staff agrees that guidance documents should be published and part of a public process.

## ***APPENDIX A, EXAMPLES***

The following general staff comments are associated with the Examples presented in Appendix A of the White Paper. Specific comments will be documented separately.

It is not possible to determine whether the concerns are valid with complex issues described in 4 or 5 sentences. However, the examples provided do not accurately represent generic issues. They appear to be complaints about specific industry issues raised by NRC staff. These specific items should be refuted and resolved with NRC management at the time the issue is identified, and not left to fester. In some cases, the examples provided are over 10 years old and others are very plant specific. If a specific issue needs more licensing basis knowledge, then current NRC processes engage the appropriate expertise.

Overall, the examples provided by industry do not accurately reflect generic issues, or reasons to create a new process. The white paper may be confusing a lack of industry knowledge on a specific item with a process to look at generic issues. The staff does not generally agree with the characterization of the issues in the white paper Appendix.