

TO BE WITHHELD FOR EXEMPTION 5

OYSTER CREEK COMMITMENT INSPECTION
Per IP 71003 – App. C MC 2515, Infrequent Procedures
LESSONS LEARNED AND KEY QUESTIONS DEVELOPED
(As of 12/18/08)

DISCUSSION:

[(b)(5)] the Deputy Division Director of DRS assigned EB 1 action in order to build consensus in this area by developing and implementing an action plan. From the review a number of Lessons were Learned and there is a need to address a number of questions. ex 5

LESSONS LEARNED (LL):

[(b)(5)] ex 5

(b)(5)

N/17

QUESTIONS:

The questionable areas surrounding the results of the OC commitments inspection were listed below. Consideration should be given to obtaining additional stakeholder input in the form of OE, for views on commitments and deviations, and DRIS, for views on assessment of commitments.

1. What is the purpose of the IP 71003 as a part of 2516, or as a part of 2515 (ROP), is there any difference, why or why not?
 - a. Is it to verify the adequacy and proper implementation of license renewal commitments?
 - b. If yes to 1.a, how is this done if no implementation (with results) occurs such as before the period of extended operations?
 - c. If no to 1.a, is it true that that the basis for this is that the standard in license renewal is: Were the commitments implemented so there is REASONABLE ASSURANCE the affects of aging is managed? (OR Is this too high a level for the objective of the IP 71003?
 - d. Is it true that there is no standard in license renewal called "adequate" or "inadequate"?
 - e. Is there a difference between commitments made as a part of Part 50 vs. Part 54?
 - f. Was the inspection plan consistent with the objective of the IP 71003 latest issue from RIC of 2008?
 - g. How do we determine failures to implement commitments in light of the endorsed definitions and above noted standards? The agency endorsed reference is:

NEI 99-04 (endorsed by RIS 2000-17, dated September 21, 2000):

"A Regulatory Commitment means an explicit statement to take a specific action agreed to, or volunteered by, a licensee and submitted in writing on the docket to the NRC. Licensees frequently communicate their intent to take certain actions to restore compliance with Obligations, to define a certain method of meeting Obligations, to correct or preclude the recurrence of adverse conditions, or to make improvements to the plant or plant processes. A Regulatory Commitment is an intentional undertaking by a licensee to (1) restore compliance with regulatory requirements, or (2) complete a specific action to address an NRC issue or concern (e.g., generic letter, bulletin, order, etc.). With respect to corrective actions identified in a NOV response or LER, the specific method(s) used by licensee to restore compliance with an obligation are not normally considered a Regulatory Commitment. The regulatory commitment in this instance is the promise to restore compliance with the violated obligation."

This is not to be confused with a license condition or other requirement which is officially defined as an "obligation" as follows:

"Obligation refers to any condition or action that is a legally binding requirement imposed on licensees through applicable rules, regulations, orders and licenses (including technical specifications and license conditions). These conditions (also referred to as regulatory requirements) generally require formal NRC approval as part of the change-control process. Also included in the category of obligations are those regulations and license conditions that define change-control processes and reporting requirements for licensing basis documents such as the updated FSAR, quality assurance program, emergency plan, security plan, fire protection program, etc."

NOTE: Nothing in the above reference addresses whether the commitments were relied on or made within the current licensing bases

2. What process are we in, 2516 or 2515 (ROP), for any inspection since 71003 is noted in both
 - a. What is the related documentation process to be used?
 - b. What is the related assessment process to be used?
3. If a license is not renewed and IP 71003 is conducted, how can you formulate performance deficiencies since the licensing action has not been taken on these commitments?

- a. Should we be only discussing factual based observations without context of meeting or not meeting the commitment and with no assessment of significance – how would this look and how receptive would the public be to the issue being written up without context, assessment, or action by NRC staff?
- b. How can we proclaim a finding if we are still deciding over wording in an SER listing of commitments – Should we not be waiting for a renewed license and waiting until they enter the period of extended operation before you can proclaim it a "finding".
- c. Until we know what is acceptable, should the issue be written as Unresolved – see definition of URI in MC 0612 (information needed in order to determine acceptability, violation or deviation)?

IMC 0612 Section 03 definitions for an Unresolved Item:

"An issue about which more information is required to determine if it is acceptable, if it is a finding, or if it constitutes a deviation or violation. Such a matter may require additional information from the licensee or cannot be resolved without additional guidance or clarification/interpretation of the existing guidance (e.g., performance indication reporting guidance.

4. Why is the inspector talking/documenting the apparent failures to meet commitments if these areas are indeed minor performance deficiencies - appears to be contrary to MC 0612?
 - a. Is there agreement that a commitment is a standard for which any licensee and in particular, Amergen, had reasonable control?
 - b. Can we call them performance deficiencies with or without a renewed license?

IMC 0612 Section 03, Definitions, for Performance Deficiency states:

"An issue that is the result of a licensee not meeting a requirement or standard where the cause was reasonably within the licensee's ability to foresee and correct, and that should have been prevented. A performance deficiency can exist if a licensee fails to meet a self-imposed standard or a standard required by regulation." ... it goes on to discuss that cross cutting aspects in and of themselves are not performance deficiencies... mostly causal attribute information.

NOTE: Nothing in the above reference addresses whether the commitments were relied on or made within the current licensing bases

- c. Why document these issues if they are minor?

IMC 0612 Section 05 as an exception in a box:

EXCEPTION: "A minor violation or finding may be documented when it is necessary to close a licensee event report or to close an unresolved item, or if related to an issue of agency wide concern (e.g., in documenting the results of a temporary instruction). If it is necessary to document a minor violation, then it is done in accordance with the guidance contained in the Enforcement Manual."