



NUCLEAR ENERGY INSTITUTE

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July 8, 2009

Mr. Glenn Tracy  
Director  
Division of Construction Inspection and Operational Programs  
Office of New Reactors  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

**Subject:** Status of ITAAC closure and maintenance issues

**Project Number: 689**

Dear Mr. Tracy:

We understand that the staff is preparing to update the Commission on the status of ITAAC closure and maintenance issues. This letter provides the industry's perspective on the status of those issues based on a series of public meetings over the past several months, the most recent of which was June 11, 2009. We believe we have made considerable progress towards ITAAC process guidance that is clear and workable and that relatively few issues remain to be resolved.

The bulk of these interactions has focused on the period after ITAAC Closure Letters required by 10 CFR 52.99(c) are submitted to the NRC and the 10 CFR 52.103(g) requirement for the Commission to ultimately find that "the acceptance criteria in the combined license are met", i.e., that there is reasonable assurance that the facility has been constructed and will be operated in accordance with applicable requirements. The Section 52.103(g) provision is a particular challenge because months or even years may pass between the time the ITAAC Closure Letters are submitted and the time when the Commission will make the final ITAAC finding. The NRC staff has expressed the need to have confidence that prior ITAAC conclusions have been maintained and remain valid in order to make a determination and recommendation to the Commission on the completion status of ITAAC to support the required Commission finding. We expect that this confidence will derive from a combination of the following:

- Licensee programs and NRC inspections thereof that assure and provide confidence that ITAAC conclusions are being effectively maintained,

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- Notifications (both formal and informal) to the NRC concerning events and activities that affect closed ITAAC, and
- Lack of open inspection findings (ITAAC-Related Construction Findings or ITAAC Findings) or other material information indicating that ITAAC are not met.

In addition, as we have discussed with the staff, licensees are expected to submit an "All ITAAC Complete" Letter that affirms that all ITAAC have been performed, all acceptance criteria have been met, and all ITAAC conclusions are being maintained.

Our discussions to date have brought us closer to a common understanding of the conditions that should be present to support the Section 52.103(g) finding. As further input in this regard, two enclosures are provided. Enclosure 1 summarizes important preliminary understandings between NEI and the staff related to 1) ITAAC closure and maintenance; 2) attributes of licensee programs to maintain ITAAC conclusions; 3) proposed post-closure notifications concerning activities affecting closed ITAAC; and 4) the Section 52.103(g) finding that acceptance criteria "are met."

Enclosure 2 identifies a small number of issues that require further discussion and provides industry perspective and input on each for NRC staff consideration. The NRC staff and the industry have not yet reached a preliminary understanding on these matters. These issues include the following:

1. **Threshold for formal notifications concerning events or activities that affect a closed ITAAC** – Initial comments on the thresholds proposed by the NRC staff at the June 11, 2009 meeting for additional formal notifications are provided. Further discussion is needed to finalize and assure common understanding of these thresholds.
2. **Criteria for the Section 52.103(g) finding** – We believe the approach proposed by the staff on June 11 to use the same thresholds for both post-closure notifications related to ITAAC maintenance and as criteria for the Section 52.103(g) finding introduces the potential for unnecessary hold points on the Section 52.103(g) process. In response, we are recommending alternative criteria for the Section 52.103(g) finding that encompass the four thresholds proposed by the staff but would not unduly delay the Section 52.103(g) process for maintenance issues that do not invalidate original ITAAC conclusions.
3. **Proposed adjustment to the notification process for conditions identified very late in construction** – We recommend an adjustment to the staff's proposed process for post-closure notifications related to preserving ITAAC conclusions for maintenance issues that are identified very late in construction.
4. **ASME Section XI applicability prior to the Section 52.103(g) finding** – We do not agree with the NRC staff interpretation that current NRC regulations do not permit transitioning from the ASME Code Section III to Section XI until after the Section 52.103(g)

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finding is made. As discussed on June 11, further discussion and reconsideration of the staff's interpretation of the regulations is needed to assure consistency of NRC and ASME requirements.

We believe the preliminary understandings and recommended approaches in this letter are reasonable and appropriate. While not specifically required in the regulations, these proposals are not inconsistent with the ITAAC process requirements in 10 CFR 52.99 and 52.103. As such, we do not believe that changes to 10 CFR Part 52 are necessary to codify understandings and recommendations contained in this letter, but rather may be addressed in regulatory guidance. In contrast, as discussed in the enclosures, we find that certain June 11 NRC staff proposals lack a regulatory basis. In any event, the staff has stated its intent to pursue rulemaking to establish new Part 52 requirements based on the resolution of ITAAC closure and maintenance issues. If the staff proceeds with such rulemaking, we believe any rule changes should be minimal and high-level, leaving implementation issues to be largely addressed in regulatory guidance—consistent with the NRC's historic practice. This approach is appropriate considering the untried nature of ITAAC processes and the need for flexibility to deal with unforeseen process issues.

As we have discussed with the staff, we intend to memorialize common understandings related to ITAAC closure and maintenance in a supplement to NEI 08-01, *Industry Guideline for the ITAAC Closure Process Under Part 52*, later this year.

We look forward to continuing the constructive dialogue on ITAAC closure and maintenance issues and to establishing clear and workable guidance for implementing Part 52 requirements in this area. If you have any questions, please contact me.

Sincerely,



Russell J. Bell

Enclosures

c: Mr. Mark Kowal, NRC/NRO  
Mr. Richard Laura, NRC/NRO  
Ms. Nanette Gilles, NRC/NRO  
Mr. Michael Spencer, NRC/OGC