

NON-CONCURRENCE PROCESS

SECTION A - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL

TITLE OF DOCUMENT V.C. Summer 2010-502 Inspection Report	ADAMS ACCESSION NO.
DOCUMENT SPONSOR Brian R. Bonser	SPONSOR PHONE NO. 404-997-4653
NAME OF NON-CONCURRING INDIVIDUAL Lee R. Miller	PHONE NO. 404-997-4676

DOCUMENT AUTHOR DOCUMENT CONTRIBUTOR DOCUMENT REVIEWER ON CONCURRENCE

TITLE Senior Emergency Preparedness Inspector	ORGANIZATION RII/DRS/PSB1
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REASONS FOR NON-CONCURRENCE

Description:

Discussion with NRC during the October 7, 2009 exercise outlined that Summer would maintain scenario integrity and prevent scenario compromise by placing all Summer emergency preparedness staff, the two offsite liaisons, and the emergency control officer with knowledge of the October 7, 2009 exercise on scenario security agreement. It was further stated that individuals with knowledge of the October 7, 2009 exercise scenario would not participate as players in the onsite demonstration. On October 15, 2009, V.C. Summer requested a temporary one-time exemption from the requirements of 10 CFR 50, Appendix E, Section IV.F.2.b. The request stated that the onsite portion had to be postponed due to a plant trip which resulted in station resources being redirected to properly respond to the plant transient.

On October 26, 2009, NRC sent a Request for Additional Information (RAI) outlining questions discussed with Summer's staff on October 22, 2009. V.C. Summer's response to the RAI stated that special circumstances existed and that as a result of participating in the offsite portion of the exercise, the scenario has been compromised. It was stated that to ensure exercise integrity, the scenario will require modification and new ERO team will be selected to participate in the biennial exercise. Several activities are necessary to modify the exercise. These activities include:

- * Modifying the approved scenario to ensure exercise integrity is maintained
- * Revalidating the modified scenario
- * Formulating scenario logistics with drill controllers and evaluators
- * Presenting the modified scenario to NRC Region II for approval prior to conducting the exercise

On December 17, 2009, the NRC granted the one-time exemption.

On April 6, 2010, NRC Regional Emergency Preparedness staff discussed with Summer Licensing and Emergency Preparedness staff the biennial exercise scheduled April 21, 2010. It was noted in the exemption letter stated that the scenario of October 7, 2009, was known to the ERO team members, the scenario would require modification, and a new ERO team would be selected.

Continued on attachment 1. Inform NRC 757 will not allow sufficient text in section D.

CONTINUED IN SECTION D

SIGNATURE

DATE

7/29/2010

**SUBMIT FORM TO DOCUMENT SPONSOR AND COPY TO YOUR IMMEDIATE SUPERVISOR AND
DIFFERING VIEWS PROGRAM MANAGER**

Attachment 1 Continuation of Section A
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The NRC determined that the 2009 scenario as modified for the 2010 biennial exercise was not varied enough to be a sufficient test of the plan. The changes in the scenario were noted as a change in wind direction, addition of an unusual event HU.2.1, and some time delays were inserted to allow facility manning. The NRC noted that all other scenario events were the same for the 2010 scenario. It was stated by the NRC that Summer had an opportunity to fix the scenario and ensure that the ERO members were not the same. Summer provided assurance that the scenario confidentiality had been maintained from the October 7, 2009 exercise.

In an e-mail dated April 6, 2010, Summer outlined why the 2009 exercise scenario should not be considered compromised. The e-mail stated, "In summary, VC Summer is confident that scenario confidentiality has been maintained throughout this process. All persons who participated in the October 7th FEMA demonstration have signed confidentiality agreements. A new ERO team has been selected to participate in the April 2010 Exercise and the exercise scenario was changed to provide a different initiating event."

On April 29, 2010, staff from NRR, NSIR, and Region II held a conference call with respect to V.C. Summer's 2009 biennial exercise exemption request. It was determined that the exemption would not have been granted based on the minimal scenario changes. The scenario compromise outlined in Summer's exemption request had a significant impact on the NRC's decision process. Summer did not meet the intent of the granted exemption.

Issues:

1. The V.C. Summer 2010 exercise scenario would not have been accepted as modified, but Summer convinced the inspector that the 2009 exercise scenario was not compromised. The Scenario review required by IP71114.01 found that the scenario was not sufficiently varied for a compromised scenario; the licensee assured the inspector that scenario integrity had been continuously maintained and provided an e-mail outlining the bases for the statement. Bob Williamson sent copies of the e-mail to his senior management.
2. During our conference call on April 29, 2010, with Robert Martin, NRR Project Manager; Michael Norris, NSIR; Robert Kahler, NSIR; Jim Beavers, RII; Jim Dodson, RII; Lee Miller, RII; the following was agreed upon by the above members of the call:
 - 1) The scenario compromise had a significant impact on the decision process
 - 2) Exemption would not have been granted based on the minimal scenario changes
 - 3) The licensee did not meet the intent of the exemption.

The group decided that there were three (3) issues to pursue going forward.

- 1) First, continue with the 50.9 issue (inspection report and SERP)
- 2) Determine if the commitments required to obtain the exemption were met.
- 3) Evaluate if the 2009 EP Exercise performed in April 2010 was sufficient.

Attachment 1 Continuation of Section A
V.C. Summer 2010-502 Inspection Report

HQ was to contact Office of Enforcement and Region II was to continue the allegation process with Regional Counsel.

Brian Bonser, RII, was also on the conference call but did not agree with the direction to be taken.

3. Since the conference call the allegation submitted to EICS was stopped and DRS management decided that the 2009 exercise scenario was compromised, therefore no 50.9 issue existed with the exemption submittal.
4. There was no determination of a potential 50.9 issue associated with the acceptability of the 2010 exercise scenario. Between Summer Conference call with the inspector on April 7, 2010 and Bob Williamson's e-mail of April 7, 2010, it was repeatedly stated that no compromise of the scenario had occurred to the inspector. Any compromise of the 2009 exercise scenario would have invalidated 2010 exercise scenario.
5. I recommend the following:
 1. The enforcement action on the 50.9 issue should be continued. The focus should be associated with the 2009 scenario compromise issue and its use during the 2010 exercise.
 2. Continue the allegation submitted to EICS ARB and allow the Office of Enforcement to determine if further investigation is required.
 3. Determine if the 2010 graded exercise is valid or needs to be re-demonstrated.
 4. Determine if other violations exist as a result of 1 and 2 above.
6. There were two 50.9 issues: 1) associated with obtaining the exemption because the 2009 scenario was compromised and 2) the licensee later saying the 2009 scenario was not compromised. If the determination for the first is that a compromise existed, then What is the basis for accepting the licensee's accepting the licensee's statement indicating confidence that the 2009 exercise was not compromised and all personnel involved signed confidentiality agreements. This confidence allowing only minor changes, addition of one event and a wind direction change, to the exercise scenario being used in the 2010 exercise.
7. How was the determination reached that the 2010 exercise was a continuation of the 2009 exercise and that IP 71114.01 directions did not have to be followed.?
8. What is the basis for determining that the Summer 2010 exercise scenario irregularities should be handled differently than the McGuire 2009 exercise scenario irregularities?
9. What was basis for the directed determination that the Summer 2010 exercise scenarios irregularities were only a green finding?

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10. I agree that the cause of the irregularities was directly related to the cross-cutting component of work practices in the area of Human Performance because the licensee did not define and effectively communicate expectations regarding procedural compliance and personnel follow procedures aspect H.4(b). They failed to follow EPP-105, Conduct of Drills and Exercises, Revision 8, which was in effect prior to the 2010 exercise. If the cross-cutting issue is deleted from the report, please provide the basis for that decision.

NON-CONCURRENCE PROCESS

TITLE OF DOCUMENT V.C. Summer 2010-502 Inspection Report	ADAMS ACCESSION NO.
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**SECTION B - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL'S SUPERVISOR
(THIS SECTION SHOULD ONLY BE COMPLETED IF SUPERVISOR IS DIFFERENT THAN DOCUMENT SPONSOR.)**

NAME

TITLE	PHONE NO.
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ORGANIZATION

COMMENTS FOR THE DOCUMENT SPONSOR TO CONSIDER

- I HAVE NO COMMENTS
- I HAVE THE FOLLOWING COMMENTS

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SIGNATURE	DATE
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SUBMIT THIS PAGE TO DOCUMENT SPONSOR

NON-CONCURRENCE PROCESS

TITLE OF DOCUMENT VC Summer Nuclear Plant Inspection Report 05000395/2010502	ADAMS ACCESSION NO.
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SECTION C - TO BE COMPLETED BY DOCUMENT SPONSOR

NAME Brian R. Bonser	PHONE NO.
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TITLE Branch Chief, Plant Support 1, Division of Reactor Safety, Region II	PHONE NO. 404-997-4653
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ORGANIZATION USNRC - Region II - Division of Reactor Safety

ACTIONS TAKEN TO ADDRESS NON-CONCURRENCE (This section should be revised, as necessary, to reflect the final outcome of the non-concurrence process, including a complete discussion of how individual concerns were addressed.)

Mr. Miller's non-concurrence discusses several potential issues he identified from the Summer emergency exercise inspection and his recommendations. The non-concurrence concerns the calendar year 2009 Summer Nuclear Plant biennial emergency exercise inspection results. The exercise had an off-site portion run on October 7, 2009 and an on-site portion run on April 21, 2010. This was one emergency exercise that was split in to two parts due to operational and resources limitations experienced at Summer in October 2009. A delay in the on-site portion of the exercise was granted by the NRC in an exemption dated December 17, 2009. The inspection results are documented in inspection report 05000395/2010502. The inspection resulted in no findings.

The licensee stated in the exemption request that there was an off-site and on-site portion of the biennial emergency exercise. They requested a delay in the on-site portion of the exercise due to plant operational issues experienced in October 2009. The off-site portion of the exercise was run on October 7, 2009. During the off-site exercise the licensee supported state and local authorities by establishing a control cell from the Summer Emergency Operations Facility (EOF). As a result of participation by members of the licensee emergency response organization (ERO) and state and local authorities, the exercise scenario was compromised. Following modification to the exercise scenario, the on-site portion of the biennial exercise was run on April 21, 2010.

In order to ensure the validity of each portion of this emergency exercise the NRC exemption allowing the delay in the on-site portion of the exercise stated:

"As a result of the licensee participating in the offsite portion of the exercise performed on October 7, 2009, the exercise scenario would be compromised with respect to having the licensee's ERO subsequently conduct the onsite exercise in accordance with that scenario. Thus, to ensure exercise integrity, the scenario will require modification and a new ERO will be selected to participate in the onsite portion of the biennial exercise."

The central concern of Mr. Miller's non-concurrence memo was whether the licensee's modifications to the Summer biennial emergency exercise scenario after the off-site exercise were sufficient to satisfy the intent of the exemption granted by the NRC on December 17, 2009, to delay the on-site portion of the biennial emergency exercise. I (PSB1 Branch Chief) understood the 10CFR50.9 concern to be based on whether the licensee in their exemption request gave the NRC complete and accurate information on the extent to which the integrity of exercise scenario was compromised on October 7, 2009, and the modifications to the exercise scenario that were necessary to run the on-site portion of the exercise in April 2010. Mr. Miller's non-concurrence memo also recommended continuation of a proposed allegation to determine if an Office of Investigations review was warranted to determine if the licensee had submitted incomplete and/or inaccurate information, determination if the Summer 2010 on-site emergency exercise was valid, and determination if other violations existed.

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 CONTINUED IN SECTION D

SIGNATURE - DOCUMENT SPONSOR <i>Brian R. Bonser</i>	DATE <i>8/26/2010</i>	SIGNATURE - DOCUMENT SIGNER <i>Brian R. Bonser</i>	DATE <i>8/26/2010</i>
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NON-CONCURRING INDIVIDUAL (To be completed by document sponsor when process is complete, i.e., after document is signed):

- | | |
|---|---|
| <input type="checkbox"/> CONCURS | <input checked="" type="checkbox"/> WANTS NCP FORM PUBLIC |
| <input checked="" type="checkbox"/> NON-CONCURS | <input type="checkbox"/> WANTS NCP FORM NON-PUBLIC |
| <input type="checkbox"/> WITHDRAWS NON-CONCURRENCE (i.e., discontinues process) | |

Following the on-site exercise inspection in April and as part of his effort to identify and resolve the potential Summer inspection issues Mr. Miller conducted a conference call on April 29, 2010, with emergency preparedness staff counterparts in headquarters. As a result of the call Mr. Miller decided to pursue the three Summer exercise issues stated in his non-concurrence.

As part of the normal inspection process all potential inspection findings and issues identified by inspectors are reviewed by management before the inspection results become final. Being the PSB1 Branch Chief I am also the signer and final approver of the inspection report. I reviewed the inspector's (Lee Miller) potential inspection findings/issues from the Summer biennial exercise. My review of the 50.9 concern concluded there was not a 50.9 issue and there were no violations of regulatory requirements. I concluded that the licensee had given the NRC staff complete and accurate information in their exemption request and had met the commitments made in the exemption. I therefore concluded that further pursuit of a 50.9 concern was not warranted. The 50.9 concern was also independently reviewed by the Deputy Director, Division of Reactor Safety (DRS) and the Director, DRS. Both of their reviews concluded there was no 50.9 issue. I also concluded that the exemption and exemption request had not clearly stated the expectations for modification of the exercise scenario following the off-site portion of the exercise and thus had created differing views on the extent to which the scenario should be modified to be effective.

In addition since management concluded there was not a 50.9 issue there was no basis to continue pursuit of an allegation. At this point I halted the effort to take the issue to an Allegation Review Board.

Overall, management concluded based on discussions with the inspectors and a review of the Summer exercise results that the on-site portion of the exercise was valid, tested the appropriate elements of the emergency plan, and demonstrated there was reasonable assurance that the licensee could implement their emergency plan effectively.

I also independently consulted with the Joseph Anderson, Chief of the Operating Reactor Licensing and Outreach Branch on the exemption request and the Summer EP exercise. In my email to him I explained that I and my management had reviewed the 10CFR 50.9 concern and concluded it was not an issue. We all understood Mr. Miller's concern and believed the wording of the exemption request and exemption could have been more definitive and provided clearer expectations. However, from a literal reading of the Summer exemption we concluded a reasonable person could interpret the licensee's actions to be in accordance with the wording of the exemption granted on December 17, 2009. We also concluded that the licensee modified the exercise scenario as stated. I considered the modifications barely adequate but with no clear regulatory guidance on our expectations for scenario revision I didn't see a regulatory issue. Mr. Anderson in his response stated he would support the Regional management's determination in regards to a 50.9 violation. He also agreed the exemption request could have been more definitive and provided clearer expectations.

I believe that all parties involved made a good faith effort to gather and discuss all information and perspectives related to the issues raised in the non-concurrence and adhered to the ROP inspection process. The parties involved in the discussion and resolution of the issues included the exercise inspectors, the Plant Support Branch 1 Branch Chief, the DRS Deputy Director, the DRS Director, and NSIR management and EP staff counterparts. The Summer exercise inspection results should remain as a clear inspection.