

From: Sullivan, Kenneth *BNL*
To: Frumkin, Daniel *NER*
Subject: RE: Oyster Creek Phase 1 Exemption Request
Date: Friday, September 25, 2009 10:45:09 AM

Thanks Dan - good to hear we are in agreement with the technical aspects of the review...

I recognize the difficulty correlating MOAs to documented staff approvals. With regard to the "legal" aspects... you indicate that if the MOAs are "discussed" in an SE they are legally "approved." This infers that any statement, in any SER, that indicates the staff was "aware of" or "should have been aware of" III.G.2 MOAs represents "tacit approval"

- Is that right? ... seems like a stretch to me...

The 1993 Peach Bottom SER is a lot cleaner than the SER referenced by OC....For one thing the Peach Bottom SE clearly states that the scope of the review included entire Fire Protection Program thru Rev. 4.... So, for this case, it's not a stretch to think that the staff approved all FP features described in the FPP (including any III.G.2 MOAs)....The March 3, 2009 OC submittal says the staff reviewed the entire FP program...However, as clearly stated in the referenced SER the staff's review was limited to Alternative Shutdown Capability (III.G.3 and III.L)and specific exemptions. This limited review scope is consistent with the vast majority of the early SEs (1980's vintage) - For cases such this, where the staff clearly did not review the "entire" FP program (i.e., III.G.2, III.G.3 and III.L), the SERs will not include an evaluation of any III.G.2 features.... including manual actions. As a result, there is no safety basis established in the SER and, as you can imagine it is very difficult, if not impossible, to meet the review objective of "confirming that the safety basis established in the SER remains valid."

Also - The March 3, 2009 OC submittal was based on a comparison of MOAs against IP 71111.05T rather than NUREG 1852. This is consistent with the C. Pragman (Exelon) presentation at NEI Forum, which identifies the following attributes of what he refers to as a "Phase 1" review:

- * OMA's for which there is compelling evidence of prior NRC review and acceptance
- * Confirmation that SER safety basis remains valid
- * A Phase 1 review requires minimal effort - consisting of a point-by point comparison to IP criteria (not NUREG-1852).

I don't believe OC meets the first two bullets.... and I also have problems with the third....Is demonstrating conformance to IP 71111.05T sufficient? While I am very much aware of its content, I certainly haven't seen it referenced as staff review guidance anywhere.

Bottom Line - OC does not have an SE that "approves" the use of MOAs for III.G.2

Nevertheless... I appreciate your response and will continue the technical review as you suggest

B-31

Thanks

Ken

-----Original Message-----

From: Frumkin, Daniel [mailto:Daniel.Frumkin@nrc.gov] , NRC
Sent: Friday, September 25, 2009 7:38 AM
To: Sullivan, Kenneth
Cc: Metzger, Brian
Subject: RE: Oyster Creek Phase 1 Exemption Request

Ken,

When we wrote the RIS saying that we would accept previously written SE's, we expected to see explicit treatment of the operator manual actions, discussion of DID, timing, etc. We didn't, there was no docket evaluation.

You have hit the nail on the head, all that the SEs say is that the NRC was aware of the actions, there is no evidence that the NRC did any rigorous review of the manual actions.

But, legally they were approved - since they were discussed in the SE.

So the approach that the NRC staff took with the previous Phase 1 (Exelon's term), was that "yes" it was approved, but the NRC needs the technical basis confirmed. Since there is no docketed technical basis, the licensees have to submit the technical basis as part of this Phase 1 submittal. The only difference between phase 1 and phase 2 review is how we write the conclusion and we aren't as strict with the "reliability" aspect in NUREG-1852. The reason for the reduced attention on reliability is that it is unlikely that reliability was considered way back when.

But if there is evidence that the action is not reliable, then we will pull that string without calling it reliability.

The bottom line is that we are doing pretty much the same review for both phase 1 and phase 2, since no NRC technical review (or even a licensee technical review) is on the docket.

From: Sullivan, Kenneth [ks@bnl.gov] , BNL
Sent: Thursday, September 24, 2009 3:39 PM
To: Frumkin, Daniel
Subject: Oyster Creek Phase 1 Exemption Request

Dan

It is my understanding that in order for a pre-79 plant to credit prior staff acceptance of operator manual actions (OMAs) as a means of satisfying III.G.2, the MOAs have to be explicitly reviewed in an SE....I believe industry would agree -, in his presentation at the NEI conference, Chris Pragman of Exelon (Licensee of Oyster Creek - oddly enough) states that a Phase 1 review can only be performed if there is compelling evidence of prior NRC review and acceptance of OMAs. Otherwise a more detailed Phase 2 review is required.

In its Phase1 exemption request for OMAs, Oyster Creek (a pre-79 plant) states that the request is limited to those operator manual actions credited for 10 CFR 50, Appendix R, Section III.G.2 compliance that were previously found acceptable for OCNCS by the NRC in a Safety Evaluation Report (SER).

To support this claim OCNCS cites two SERs (March 24, 1986 and June 25, 1990) as follows:

* The March 24, 1986 SER accepted the FHAR, and also accepted the OCNCS proposed resolution to the NRC reviewer's final comments regarding manual actions.

* The June 25, 1990 SER clearly acknowledges that manual actions are performed outside the fire zone.

The licensee claims that the March 24, 1986 SER accepted the FHAR in its entirety - including all OMAs described in the FHAR - However -Section 8 of the SE specifically states that the scope of the staffs review was limited to alternate shutdown capability Appendix R, Items III.G.3 and III.L. (which was the staff practice at that time) Section 8.3 Conclusion, of the SE states: We have reviewed the licensee's proposed alternate safe shutdown capability for Oyster Creek in accordance with Appendix R criteria. Based on that review, we conclude that the performance goals for accomplishing safe shutdown in the event of a fire, i.e., reactivity control, inventory control, decay heat removal, pressure control, process monitoring and support functions are met by the proposed alternate safe shutdown facility. Therefore, we conclude that the requirements of Appendix R, Sections III.G.3 and IITIL are satisfied.

The extent of the staff's review of any III.G.2 issue is limited to the review of the requested exemptions - In all cases, staff acceptance is based on the capability of zone-specific, fire safety features (suppression, detection, fire loading, manual suppression capability, etc.) - and not the capability of MOAs - Since MOAs were not considered in the staff's evaluation... In no instance did the staff's acceptance of a requested exemption include an evaluation of MOAs

Statements in the 1986 SER such as:

* all required hot shutdown systems that would be damaged by a fire in this area are protected by a 1-hour fire barrier.

* The required shutdown-related cables are either protected by a 1-hour fire barrier or an alternate means for achieving safe-shutdown is available outside of this area.

* In the April 3, 1985 report, the licensee committed to relocate certain shutdown related cables and to protect others in a 1-hour fire-rated barrier.

* those required shutdown systems that are vulnerable to fire damage in this area are protected by a 1-hour fire barrier.

Clearly indicate that the staff was of the opinion that all required SSD cables were protected with a 1 hour rated barrier or an alternate shutdown capability was provided

Neither of the referenced SERs explicitly approve all the MOAs identified in the OC submittal. The SEs do, however, indicate that the staff was aware MOAs were being performed (for either hot or cold shutdown). As stated in the June 25, 1990 SE, the extent of the staff review was limited to ensuring that they "would be accomplished from outside this zone and are not affected by a fire in this zone ." Does this constitute "tacit approval"?

OC also cites various telephone records and submittals - However ...It is my understanding that docketed submittals, meeting minutes, licensee presentations, and inspection reports, do not represent evidence of NRC approval....

Apologize for the length of this diatribe...

Would appreciate hearing your views before I develop the RAIs ...
Please give me a call (631-344-7915) anytime tomorrow to discuss further

Thanks

Ken Sullivan, BNL