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To: Daniel Frumkin, *nrc*
Cc: Mark Kowal; Sunil Weerakkody; Alex Klein
Subject: FW:
Date: Monday, March 23, 2009 10:52:28 AM
Attachments: EGM 07-004 Expiration Comm Plan Rev3.doc

Dan, be advised that Region I has decided to reach out to Congressional and State/County staffs on the Indian Point and Oyster Creek exemption requests before the exemption requests go public in ADAMS. Attached is the comm plan. The current plan is to make the contacts on 3/25/09.

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From: Brice Bickett, *RI*
Sent: Monday, March 23, 2009 10:36 AM
To: Doug Tifft; Nancy McNamara; Neil Sheehan; Diane Screnci; John Boska; John Rogge; Mel Gray; Richard Barkley; Ronald Bellamy; Eugene Dacus
Cc: Andrew Rosebrook; Keith Young
Subject:

This Appendix R Exemption Request 'DRAFT' comm plan is applicable to Indian Point and Oyster Creek only.

Please provide comments NLT COB Tuesday 3/24.....Current plan is to implement comm plan this Wednesday 3/25 - exemption requests go public in ADAMS on Friday 3/27 (both IP 2/3 and OC)

Brice

DA

3/25/2009

Expiration of Operator Manual Action Discretion
Communications Plan

Enforcement Guidance Memorandum (EGM) 07-004, "Enforcement Discretion for Post-Fire Manual Actions Used as Compensatory Measures for Fire Induced Circuit Failures."

Key Messages

- On or by March 6, consistent with guidance outlined in Enforcement Guidance Memorandum (EGM) 07-004, a number of licensees submitted an exemption request to the NRC for an exemption from the requirements of 10 CFR 50, Appendix R, related to the use of operator manual actions to mitigate a number of potential fire-induced circuit failure scenarios.
- NRC issued EGM 07-004 on June 30, 2007. The EGM provided licensees enforcement discretion for Appendix R non-compliances related to post-fire operator manual actions if licensees initiated corrective actions and implemented compensatory measures by March 6, 2009.
- **Entergy's (Exelon's)** submittal is consistent with the NRC's process for exemption requests, meets the intent of corrective action options defined in EGM 07-004, and continues to provide appropriate focus on public health and safety.
- The NRC will perform a review of the submitted exemption requests. At this time, none of the non-compliances identified by **Entergy (Exelon)** suggest an immediate safety concern.
- A portion of the NRC's fire protection inspection activities includes review of operator manual actions for selected fire areas based on risk insights. Region I inspections have not identified significant safety issues regarding review risk significant operator manual actions at **Indian Point (Oyster Creek)** that would be used during postulated fire scenarios. [Region I has conducted six total triennial fire protection team inspections at Indian Point (three/Unit) since 2000.]
- Several Region I plants (Peach Bottom, Three Mile Island, Pilgrim, Oyster Creek, and Fitzpatrick) have submitted exemption requests on this subject. (Nine plants nation-wide)

NOTIFICATION TIMELINE (Sequence should begin with sufficient time to complete Comm plan prior to public release of exemption request)

Sequence	Action	Responsible Organization/Individual
T = 0 hr (3/25)	DRP obtains publicly available version of Exemption Requests from NRR PMs for IPEC/OC and provide to SLOs	DRP – Branch 2

T = 0+ hr	Provide NRR PMs/PAOs notice of implementation of Comm Plan	DRP – Branch 2
T = + 0.5 hr	Email congressional staff with <u>NRC key messages</u> and copy of (IPEC or OC-specific) publicly available Exemption Request	OCA - Dacus
T = + 0.5 hr	Email state and county stakeholders with <u>NRC key messages</u> and copy of (IPEC or OC-specific) Exemption Request	RI SLO - Tift
T = + 1.0 hr	Email local stakeholders with <u>NRC key messages</u> and copy of (IPEC or OC-specific) Exemption Request	RI SLO - Tift

Background

On March 6, 2009, the enforcement discretion provided by EGM 07-004 for post-fire operator manual actions (OMAs) used as compensatory measures for fire-induced circuit failures expired. (This EGM is not applicable to OMAs relied upon for mitigating multiple-spurious actuations)

Upon implementation of the ROP, which required NRC inspectors to review post-fire safe shutdown operator actions during triennial fire protection inspections, inspectors began to identify some licensees were inappropriately relying on OMAs in lieu of the protection requirements of Appendix R, III.G.2, to maintain a train free of fire damage (i.e. appropriate separation). Specifically, licensees were relying on OMAs as a permanent solution to resolve issues related to degraded fire barriers (i.e. Thermo-Lag, Hemyc) without prior NRC approval.

EGM 07-004 was issued on June 30, 2007, with two purposes:

- Define September 6, 2007, as the end date for licensees to initiate corrective actions and to implement compensatory measures for non-compliances related to post-fire operator manual actions (except for multiple spurious issues).
- Define March 6, 2009, as the date for completion of corrective actions associated with non-compliances (or the end date for transition to NFPA 805) to get discretion.

There are three ways to correct the non-compliances:

1. Adopt National Fire Protection Association Standard (NFPA)-805;
2. Comply with the requirements of 10 CFR Part 50, Appendix R, paragraphs III.G.2 or II.G.3; or
3. Submission of exemption requests or license amendments (to demonstrate that existing compensatory measures are feasible and reliable on a permanent basis).

Communication between the NRC staff and NEI (ML090130157) identified six (pre-1979) plants in Region I with the potential to submit exemption request/license amendments to correct their OMA non-compliances: Peach Bottom, Three Mile Island, Pilgrim, Oyster Creek, Indian Point, and Fitzpatrick. *(Note: Plants licensed after January 1, 1979, have addressed their OMA non-compliances via license conditions described in GL 86-10, which allows licensee to make changes to their fire protection programs without prior NRC approval provided the changes do not adversely affect the ability of the plant to shutdown.)*

Until a final determination is made on the acceptability of the six Region I plants that have submitted exemption requests, enforcement discretion continues for all non-compliant OMAs as outlined in EGM 07-004. If the requests are found acceptable for review, enforcement discretion will continue until completion of the staff's review. If any of the requests are found unacceptable for review, or subsequently rejected by the staff, the licensee will be required to implement corrective actions in accordance with their corrective action program, as well as being subject to NRC enforcement.

Therefore, the staff considers that all the above listed plants are still receiving enforcement discretion for their non-compliant OMAs until the final disposition of their exemption/amendment requests. This is within the normal process for exemption/amendment requests, meets the intent of EGM 07-004, and continues to provide appropriate focus on public health and safety.

Inspection/Oversight (Indian Point specific)

Region I has conducted three Triennial Fire Protection Inspections each at Indian Point Unit 2 and Unit 3 (U2 Inspection Reports – ML011370564, ML042330248, ML07173006, U3 Inspection Reports ML020730048, ML050660356, ML080770172). Several fire areas associated with high risk were reviewed during the inspections. A portion of the Triennial Fire Protection inspection is dedicated to reviewing OMAs for the selected fire areas for review based on risk insights (using the guidance outlined in inspection procedure 71111.05T). Specific attributes of the OMA review include feasibility, staffing, environmental considerations, communications, special tool, staffing, training, procedures, accessibility, and verification/validation. At this time, Region I inspections have not identified any significant safety issues regarding OMAs at Indian Point.

Questions & Answers

Q1. What is the nature of the actual noncompliances being addressed by the OMAs and that are in need of exemptions from the NRC staff?

A1. The underlying purpose of 10 CFR Part 50, Appendix R, Paragraph III.G.2, is to ensure that one of the redundant system or equipment trains necessary to achieve and maintain hot shutdown conditions remains free of fire damage in the event of a fire. In the 2000's, NRC regional inspectors, during baseline triennial fire protection inspections, began to find problems with the noncompliant use of post-fire OMAs.

Inspectors determined that licensees were inappropriately relying on post-fire OMAs to address fire-induced circuit failures in lieu of the protection requirements of 10 CFR 50, Appendix R, Paragraph III.G. Specifically, licensees were relying upon OMAs as a permanent solution to resolve issues related to Thermo-Lag 330-1 fire barriers.

Q2: Why does the NRC staff conclude that the affected units are safe to continue operating?

A2: NRC regulations have established a defense-in-depth (DID) approach to addressing fires. This approach focuses on fire prevention, rapid detection and prompt extinguishment. In the event that these barriers fail, Appendix R requires the establishment of an approach to safely shutdown the plant in the event the other two measures are not accomplished in a timely fashion.

The information reviewed to date suggests OMA noncompliances represent a concern with one aspect of that approach. However, neither the NRC nor the licensees have identified anything that rises to an immediate safety concern.

- Q3. What is the current status of the noncompliant identified operator manual actions?
- A3: In their exemption/amendment requests, the licensees request to be exempted from the requirements of Paragraph III.G.2 of Appendix R to Title 10 of the *Code of Federal Regulations*, to ensure that one train of safe shutdown equipment remains free from fire damage. As an alternative, the licensees have proposed OMAs to prevent or mitigate the effects of postulated fires. Consistent with the enforcement policy outlined in EGM 07-004, these noncompliant actions must be corrected. In the interim, feasible compensatory measures have been established.
- Q4. How do we know the compensatory measures are acceptable?
- A4. The compensatory measures are in place to address only one aspect of the DID approach established by the NRC through 10 CFR 50.48 and Appendix R. In addition, both the onsite and regional staff are closely monitoring the licensees' actions through the normal ROP process as well as periodic fire protection inspections.
- Q5: Why are some portions of exemption requests not in ADAMS?
- A5: The Commission has provided a general standard that information should be withheld when its release could reasonably be expected to be useful to a terrorist. Therefore, incoming fire protection documents are initially profiled as nonpublic – the NRC staff will review for release upon request. As there is some information regarding the specific OMAs that could reasonably be used to plan terrorist activities, the information describing the specific actions and their locations will remain nonpublic. A public version will be made available if requested.
- Q6. What does a member of the public need to do to obtain a copy of the non-security sensitive portions of the exemption requests?
- A6: In order to obtain a copy of the non-security sensitive portions of the exemption requests, external stakeholders should contact Marlayna Vaaler at 301-415-3178.
- Q7: Are any of the identified OMA noncompliances eligible for an extension of enforcement discretion?
- A7: No. Discretion for the existing identified noncompliances with 10 CFR Part 50, Appendix R, Paragraph III.G.2 expired on March 6, 2009, with no options available for extension. All licensees must have completed one of the corrective actions outlined in EGM 07-004 by this date or they may be subject to enforcement action.
- Q8: If a licensee does not complete the necessary corrective actions by March 6, 2009, what will the NRC do in light of the identified noncompliances?
- A8: The NRC will review a sample of the most significant noncompliances on a near-term basis and take action as necessary, but will follow up with the noncompliances identified

at most sites during the regularly scheduled fire protection inspections (typically triennially). The NRC will appropriately assess and disposition any remaining noncompliances in accordance with the normal Enforcement Policy.

- Q9. What will the NRC do in regard to the identified noncompliances while the exemption/amendment requests are under review?
- A9. Until a final determination is made on the acceptability of the submitted exemption/amendment requests, enforcement discretion continues for all noncompliant OMAs. If the requests are found acceptable for review, enforcement discretion will continue until completion of the NRC review.

Therefore, the staff currently considers that all affected plants (except as outlined above) are still receiving enforcement discretion for their noncompliant OMAs until the final disposition of their exemption/amendment requests. This is within the normal process for exemption/amendment requests, meets the intent of EGM 07-004, and continues to provide appropriate focus on public health and safety.

- Q10. What happens if a licensee's exemption request is found unacceptable for review or denied by the NRC?
- A10. If any of the requests are withdrawn by the licensee, found unacceptable for review, or subsequently rejected during the NRC review, the licensee will be required to take action in accordance with their corrective action program to correct the noncompliances, with NRC oversight via the ROP, as well as being subject to enforcement.
- Q11. How will the NRC review differ for plants that reference previously approved SERs in their exemption requests?
- A11. For pre-1979 licensees, a staff decision in a SER that approves the use of OMAs, in lieu of one of the means specified in Paragraph III.G.2, does not eliminate the need for an exemption. Pre-1979 licensees who have SERs, but not a corresponding exemption, which approve OMAs should request an exemption under 10 CFR Part 50.12, citing the special circumstances of 10 CFR 50.12(a)(2)(ii), citing the SER as the safety basis, and confirming that the safety basis established in the SER remains valid. The staff expects to grant the exemption(s) on these bases with very little further review. All other plants requesting an exemption for OMAs will receive a full review by the NRC staff.
- Q12. What process does the NRC currently use to assess the adequacy of OMAs?
- A12. A portion of the NRC's fire protection inspection activities includes review of OMAs for selected fire areas based on risk insights. Specific attributes of the OMA review include feasibility, staffing, environmental considerations, communications, special tools, training, procedures, accessibility, and verification/validation. At this time, regional inspections have not identified any significant safety issues regarding OMAs. The OMA attributes are described in inspection procedure 71111.05T, "Fire Protection."
- Q13. How is the NRC ensuring post-1979 licensees are safe in regard to fire protection OMAs given that they are not required to meet 10 CFR Part 50, Appendix R, Paragraph III.G.2?

- A13. Post-1979 plants have addressed their OMA noncompliances via 1) license conditions which allow licensees to make changes to their fire protection programs without prior NRC approval provided the changes do not adversely affect the ability of the plant to shut down, or 2) previous staff decisions in an SER that approves the use of OMAs and that does not require exemption under 10 CFR 50.12 because the license was granted after 1979.

However, post-1979 licensees may be requested to demonstrate, as part of the NRC ROP and/or normal inspection process, that the use of an OMA would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire consistent with their license. In this way, the NRC staff continues to maintain the ability to verify that the licensee's credited OMAs do not negatively impact the ability of the plant to be shut down during a fire.

- Q14: Will licensees receive additional enforcement discretion if they choose to adopt NFPA 805?
- A14: Consistent with the Enforcement Policy as revised, noncompliances which were identified prior to the letter of intent to transition to NFPA 805 are not eligible for discretion. Noncompliances identified after the letter of intent are eligible for enforcement discretion within the limitations provided by the Enforcement Policy.
- Q15: Would the previously existing identified noncompliances be acceptable under NFPA 805?
- A15: As discussed in Regulatory Guide 1.205, OMAs credited for protection of redundant trains, in lieu of Appendix R III.G.2 protection, do not meet the deterministic requirements in Chapter 4 of NFPA 805. Consequently, unless specifically approved by the NRC, these OMAs would be addressed as plant changes in accordance with Section 2.4.4 of NFPA 805 using performance-based methods.
- Q16: What happens if a licensee changes their mind in the future and decides not to transition to NFPA 805?
- A16: Consistent with the Enforcement Policy (73 FR 52705), the licensee must submit a letter stating its intent to retain its existing license basis and withdrawing its letter of intent to comply with 10 CFR 50.48(c). After the licensee's withdrawal from the NFPA 805 transition process, the staff, as a matter of practice, will not take enforcement action against any noncompliance that the licensee corrected during the NFPA 805 transition process, and will on a case-by-case basis consider refraining from taking action if reasonable and timely corrective actions are in progress (e.g., an exemption has been submitted for NRC review). Noncompliances that the licensee has not corrected, as well as noncompliances identified after the date of the above withdrawal letter, will be dispositioned in accordance with normal enforcement practices.
- Q17: Do these fire protection exemptions have any impact on plants currently undergoing reviews for License Renewal?
- A17: No. These requests for exemptions are related to issues involving manual actions in response to fire induced circuit failures. All operating plants have been taking actions to resolve this technical issue, irrespective of whether or not they have applied for license

renewal. The license renewal process separately ensures applicants for a renewed license have in place aging management programs for systems, structures, and components that are within the scope of license renewal.