

November 29, 2011

MEMORANDUM TO: Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

FROM: Michele G. Evans, Director */ra/*
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

SUBJECT: COMMITMENT MANAGEMENT AUDIT - IDENTIFICATION OF
INAPPROPRIATELY APPLIED COMMITMENTS

This memorandum implements the interim action associated with Recommendation No. 4 described in the Division of Operating Reactor Licensing (DORL) response¹ to the September 19, 2011,² memorandum transmitting the Office of Inspector General's (OIG) commitment management audit. Criteria are described below that DORL project managers (PMs) are to use when performing triennial commitment management audits for their assigned licensees. The purpose for these criteria is to assist PMs in identifying misapplied commitments. In addition, the actions PMs are expected to take upon identifying an inappropriately applied commitment are described.

Section 1 of Office Instruction LIC-105, "Managing Regulatory Commitments Made by Licensees to NRC," Revision 3,³ notes that the Nuclear Regulatory Commission (NRC) staff endorsed the guidance contained in NEI 99-04, "Guidelines for Managing NRC Commitment Changes," dated February 22, 2000.⁴ Section 3.1 of NEI 99-04 distinguishes a legal obligation from a regulatory commitment which is a volunteered or agreed to action by the licensee. Consistent with the guidance in NEI 99-04, Section 4.1 of LIC-105 instructs that actions that are deemed essential to ensure public health and safety are escalated to legally binding obligations and not accepted as regulatory commitments. Such obligations include actions that form the basis for the NRC staff's reasonable assurance finding on a licensing action.

The OIG commitment audit identified that the definition and use of commitments is not consistently understood throughout the NRC. As a result, the OIG audit determined that the NRC staff may have accepted licensee-proposed commitments rather than the necessary regulatory requirement or obligation, such as a license condition, order, rule or regulation.

CONTACT: John D. Hughey, NRR/DORL
(301) 415-3204

¹ Agencywide Documents Access and Management System (ADAMS) Accession No. ML112700129.

² ADAMS Accession No. ML112620529.

³ ADAMS Accession No. ML090640415.

⁴ ADAMS Accession No. ML003680088.

Recommendation No. 4 of the OIG audit proposed that DORL determine the extent to which commitments have been misapplied to actions that are safety significant and/or necessary for approval of proposed licensing actions. DORL's implementation of this recommendation includes the issuance of this memorandum to DORL staff specifying the following criteria to be applied when performing the triennial licensee commitment management audits:

1. Contact John Hughey (or designee) at inception of audit planning to receive a just-in-time briefing regarding the current initiatives associated with the planning and conduct of commitment management audits.
2. Determine if any of the commitments reviewed during the audit involve actions that were safety significant (i.e. commitments used to ensure safety).
3. Determine if any of the commitments reviewed during the audit involve actions that were necessary for approval of a proposed licensing action.

Should any commitments be identified that meet either criterion 2 or 3, PMs are to notify their Branch Chief by e-mail. In addition, please send an e-mail to John Hughey describing any identified, misapplied commitments for tracking purposes. This information will be used to determine if further actions are needed.

The interim guidance in this memorandum will be in effect until the next revision of LIC-105 is issued. LIC-105 is scheduled to be revised by September 2012. Any questions regarding this matter can be directed to John Hughey at 301-415-3204 (office O8-H8).

Thank you for your assistance with implementing DORL's response to the OIG commitment management audit.

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