

March 15, 2012

Mr. David Lochbaum, Director
Nuclear Safety Project
P.O. Box 15316
Chattanooga, TN 37415

Dear Mr. Lochbaum:

I am writing in response to your letter to the U.S. Nuclear Regulatory Commission (NRC) dated February 7, 2012, where you requested the Commission take steps to fairly apply its regulations to licensees regardless of their place in the license renewal process.

In your letter, you state your view that the licenses for Ginna and Point Beach were held to different standards (i.e., aging management of alloy 600 components) based on the timing of their license renewals with respect to when Revision 1 to NUREG-1801, "Generic Aging Lessons Learned (GALL) Report" was issued. Using this example, you argued that the regulations in Sections 50.109 and 50.100 of Title 10 of the *Code of Federal Regulations* (10 CFR) should govern the license renewal process to prevent such imposition of different standards on the licensees, (i.e., the NRC should have either: (1) imposed the later revised GALL Report standard on Ginna through 10 CFR 50.100, or (2) not imposed such a standard on Point Beach without a determination under 10 CFR 50.109).

You are correct in that 10 CFR 50.109 is intended to prevent the imposition of new regulatory requirements unless necessary for adequate protection or based on cost justification, and that 10 CFR 50.100 enables the NRC to take action on licenses for misrepresentation of information. However, neither case applies in the example you provided, as explained below.

The NRC staff updates guidance such as the GALL Report to incorporate new operating experience and reflect the latest information available. With each update to the GALL Report, which includes Interim Staff Guidance (ISG) issued between revisions, new or current applicants for license renewal are expected to address aspects of their aging management reviews against the latest information available in the GALL Report, just as Point Beach did when Revision 1 was issued. Such application of updated guidance by the staff does not constitute a backfit, as applicants for licenses are not protected by the Backfit Rule of 10 CFR 50.109. See 54 FR 15372, 15385-86; April 18, 1989. Nevertheless, a discussion of the need for backfitting is included as part of each revision to the GALL Report or ISG issued. Any determination of a need to impose new requirements on past applicants would result from that analysis rather than your blanket assumption that past applicants must satisfy all additional or revised measures. It is also important to note that the GALL Report is regulatory guidance that represents one acceptable way to manage aging effects for license renewal, but applicants may also propose plant-specific alternatives for staff review in their applications. Use of the GALL Report is not required, but its use facilitates both the preparation of a license renewal application by an applicant and timely review by the NRC staff.

In addition, measures such as those adopted by Point Beach for its alloy 600 program to be consistent with Revision 1 of the GALL Report should not be construed as a new requirement for previously renewed licenses, and this information does not warrant NRC actions under

10 CFR 50.100, as an update to guidance in the GALL Report does not constitute “conditions revealed by the application or statement of fact of any report, record, inspection, or other means which would warrant the Commission to [have] refuse[d] to grant a license” to Ginna. The NRC has also not found that the licensee for Ginna provided a misrepresentation of information or “any material false statement in the application or in the supplemental or other statement of fact required of the applicant” to warrant NRC actions under 10 CFR 50.100.

Although we do not agree with your interpretation of 10 CFR 50.109 and 50.100 in situations such as the example provided, we do acknowledge that differences exist among licensees’ aging management programs depending on the timing of their license renewal review. However, our Part 54 regulations require that licensees maintain the effectiveness of their approved aging management programs in order to ensure that systems, structures, and components perform their intended functions. As such, operating experience, including that reflected in subsequent revisions of the GALL Report and other plant-specific as well as industry sources, would serve to inform licensees of potential changes to aging management programs. Further, the NRC’s ongoing regulatory process, including oversight activities such as the License Renewal Inspection Procedure 71003, “Post-Approval Site Inspection for License Renewal,” provides the NRC staff an opportunity to verify implementation of these programs and determine whether appropriate operating experience was considered to maintain program effectiveness.

I hope our response addresses the concerns you raised.

Sincerely,

/RA/ B. Boger for

Eric J. Leeds, Director
Office of Nuclear Reactor Regulation

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Letter to D. Lochbaum from E. Leeds dated March 15, 2012

SUBJECT: RENEWED REACTOR OPERATING LICENSES

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