

From: [SLIDER, James](#)
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Subject: Feedback on SONGS CAL
Date: Monday, October 06, 2014 2:15:42 PM

Eric,

Thank you for your patience regarding the request for input on the EDO's request for information on the lessons learned from the SONGS experience. I appreciate your solicitation. Below are comments addressing questions on the experience with the Confirmatory Action Letter (CAL).

My colleagues in NEI's Legal Division are working on a separate set of responses to other questions in the EDO's tasking memo. Unfortunately, their letter requires wider review and concurrence, so is unlikely to reach the NRC this week.

CAL COMMENTS

1. Hearing Requests on a CAL

Background

Friends of the Earth (FOE) requested a hearing on the CAL for SONGS, arguing that the CAL and the licensee's restart actions under the CAL required a license amendment. In a decision on November 8, 2012, the Commission referred the request for hearing to the Atomic Safety and Licensing Board (ASLB) for resolution.

Comment

A CAL is an administrative enforcement action, which does not have the effect of modifying a plant's license. Because a CAL does not modify a plant's license, the NRC should not entertain hearing requests on a CAL. Accordingly, NRC should perfunctorily reject hearing requests on a CAL.

A member of the public (such as FOE in the case of SONGS) may believe that the actions specified in a CAL, or other licensee actions taken to implement the CAL, require a license amendment pursuant to 10 CFR § 50.59. There are established regulatory provisions for handling such allegations. In particular, that person may request enforcement action in accordance with 10 CFR § 2.206. If the NRC finds the allegation to have merit, the licensee would be required to seek a license amendment or otherwise take corrective action (such as modifying the action such that it does not require a license amendment). If a license amendment is needed, members of the public will have an opportunity to request a hearing. Given the Commission decision in SONGS on November 8, 2012, it may be appropriate for the Commission to issue directions to this effect.

2. Use of Licensing Processes for a CAL

Background

As part of the CAL process for SONGS, the NRC issued a number of requests for additional information (RAI) to the licensee and planned to issue a Technical Evaluation Report (TER) to support its decision to authorize restart of SONGS pursuant to the CAL.

Comment

The CAL is an enforcement process, not a licensing process. In contrast, RAIs and TERs are licensing processes and not part of the enforcement process. Accordingly, RAIs and TERs should not be part of the CAL process.

In that regard, use of RAIs and TERs implies a licensee request for formal approval by the NRC. In contrast, a CAL is intended to reflect the licensee's agreement to take certain actions and is not a request for NRC approval of any new or different licensing authority.

NRC's implementation of the CAL process should occur as part of NRC's normal inspection process. Consistent with the inspection process, the NRC may have questions regarding a licensee's implementation of the CAL and can ask those questions during its inspections. In accordance with the NRC's overall inspection process, those questions would be posed informally to a licensee and should not occur through RAIs.

Similarly, because a licensee is not requesting NRC approval of any new or different licensing authority as part of a CAL, a TER is not warranted. Instead, at the conclusion of the CAL process, the NRC should issue a short letter stating that the licensee has appropriately implemented the CAL and that the CAL is closed (referencing inspection reports as appropriate to support the NRC's conclusions).

3. CAL Provisions on NRC Approval of Restart

Background

The CAL for SONGS required NRC approval for restart of SONGS.

Comment

CALs should not require prior NRC approval for restart. A plant's license and technical specifications include provisions that govern a licensee's authority to restart the plant. If a licensee is in compliance with its license and technical specifications, it should be allowed to restart without any additional approval from the NRC.

In some cases, a licensee may need to develop operability determinations or technical justifications for restart, and a CAL appropriately might include a provision calling for the licensee to submit such information to the NRC for its consideration. To the extent that the NRC has operability or significant safety concerns based upon its review of that information or its other inspection activities, a CAL might include a "negative consent" provision that would embody the licensee's agreement not to restart until those concerns are addressed.

4. Single NRC Point of Authority for Overseeing the CAL Process

Background

The NRC established an Oversight Panel to administer the CAL process for SONGS. The Oversight Panel was co-chaired by members from Region IV and the Office of Nuclear Reactor Regulation

(NRR), and membership on the Oversight Panel was essentially evenly divided between Region IV and NRR.

Comment

NRC should designate the Regional Administrator as the single authority for the CAL process. To the extent that the Region needs technical expertise from NRR, necessary NRR personnel should be temporarily seconded to the region on a full or part time basis. This will help ensure that implementation of the NRC is not fragmented and that consistent messages are sent to all stakeholders, including the licensee.

If you have any questions, please contact me.

Best regards,

Jim

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