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June 2, 2016

MEMORANDUM TO: Stephen D. Dingbaum
Assistant Inspector General for Audits
Office of the Inspector General

FROM: Anne T. Boland, Director 
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

SUBJECT: UPDATE TO STAFF ACTIONS REGARDING OIG AUDIT OF THE
NRC'S MANAGEMENT OF LICENSEE COMMITMENTS (OIG-11-A-17)

This memorandum informs the Office of the Inspector General (OIG) of an update to staff's actions that were taken in response to the OIG audit report dated September 19, 2011,¹ "Audit of the U.S. Nuclear Regulatory Commission's (NRC's) Management of Licensee Commitments" (OIG-11-A-17).

The audit report included the five recommendations regarding the NRC's management of licensee regulatory commitments:

- (1) Revise the section of LIC-105,² "Managing Regulatory Commitments Made by Licensees to the NRC," on conducting triennial commitment management audits to include detailed sampling direction, such as a checklist of sources to be used in identifying a universe of commitments from which to sample.
- (2) Revise LIC-105, "Managing Regulatory Commitments Made by Licensees to the NRC," to include well-defined expectations and guidelines regarding the conduct of commitment management audits. The guidelines should include an expectation that audited commitments are reviewed to ensure that they have been appropriately implemented in the plant facility, procedures, program, or other plant documentation.
- (3) Develop training that sufficiently addresses the definition and use of commitments and provide training to all agency staff involved in reviewing reactor licensee commitments.

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¹ Agencywide Documents Access and Management System (ADAMS) Accession No. ML112620529

² ADAMS Accession No. ML13193A358

- (4) Identify actions to determine the extent to which commitments that are considered safety significant and/or necessary for approval of proposed licensing actions exist. This could be accomplished by either: (1) the Office of Nuclear Reactor Regulation (NRR) project managers (PMs) identifying any such commitments as part of the triennial commitment management audits, or (2) conducting a review of all existing commitments and identifying any inappropriately applied commitments. Any such commitments should be identified to NRC management for appropriate action.
- (5) Depending on the outcome of the efforts to meet Recommendation 4, develop and utilize a tool for systematically tracking the status of commitments that are deemed safety significant and/or necessary for approval of proposed licensing actions.

The NRC staff provided OIG a status of the actions taken to address the audit recommendations on March 1, 2012;³ November 1, 2012;⁴ March 4, 2013;⁵ March 26, 2013;⁶ and September 30, 2013.⁷ All actions have been completed and are closed.

On June 8, 2015, the Commission issued Staff Requirements Memorandum (SRM) SECY-15-0015,⁸ "Project Aim 2020 Report and Recommendations." The Commission directed the NRC staff to perform a one-time re-baselining of work performed across the agency, focusing not only on statutory mandates and Commission direction, but also on our safety and security mission. As a product of re-baselining, the Commission directed the staff to submit, for its review and approval, a comprehensive list of activities that can be shed, deprioritized, or performed with fewer resources.

On January 31, 2016, in Enclosure 1 of SECY-16-0009,⁹ "Recommendations Resulting from the Integrated Prioritization and Re-Baselining of Agency Activities," NRC staff recommended shedding the triennial commitment management audits for the following reason:

The staff believes that there is minimal adverse impact on our mission, principles, or values for this item. Licensee commitments do not provide a basis for regulatory decisions but the commitment audits occasionally identify a licensee deficiency. Eliminating commitment audits will remove this mechanism for identifying deficiencies.

On April 13, 2016, the Commission issued SRM-SECY-16-0009,¹⁰ documenting the Commission's approval of the staff's recommendation to eliminate the triennial licensing commitment audit. NRC staff will be taking the following actions as related to Recommendation Nos. 1 and 2 to the OIG audit report.

³ ADAMS Accession No. ML120260304

⁴ ADAMS Accession No. ML12291A795

⁵ ADAMS Accession No. ML13042A127

⁶ ADAMS Accession No. ML13085A002

⁷ ADAMS Accession No. ML13247A066

⁸ ADAMS Accession No. ML15159A234

⁹ ADAMS Package Accession No. ML16028A189

¹⁰ ADAMS Accession No. ML16104A158

OIG Recommendation No. 1:

Revise the section of LIC-105, "Managing Regulatory Commitments Made by Licensees to the NRC," on conducting triennial commitment management audits to include detailed sampling direction, such as a checklist of sources to be used in identifying a universe of commitments from which to sample.

OIG Recommendation No. 2:

Revise LIC-105, "Managing Regulatory Commitments Made by Licensees to the NRC," to include well-defined expectations and guidelines regarding the conduct of commitment management audits. The guidelines should include an expectation that audited commitments are reviewed to ensure that they have been appropriately implemented in the plant facility, procedures, program, or other plant documentation.

NRC Staff Updated Action as a Result of SRM-SECY-16-0009

The NRC staff will revise LIC-105 to remove the requirement, expectations, and guidelines regarding the conduct of triennial commitment management audits.

Justification:

Regulatory commitments do not provide a basis for regulatory decisions. The licensees follow the guidance in NRC endorsed NEI 99-04, "Guidelines for Managing NRC Commitment Changes" to properly manage and track regulatory commitments.

A sample of 30 randomly selected commitment audits reviewed since 2011, all concluded that the licensee had an effective program for managing and implementing regulatory commitments and had an effective program for managing changes to regulatory commitments. Minor deficiencies were identified in 4 of the 30 sample audit reports. None of the identified deficiencies were found to have any safety significance.

Recommendation No. 4 of the OIG audit suggested that NRC staff determine the extent to which regulatory commitments have been misapplied in previously issued licensing actions. In response to this recommendation, starting in 2011, DORL PMs have performed regulatory commitment audits with a special focus to review the previous 3 years of licensing actions to determine the extent of misapplied commitments, and to conduct any needed followup actions. Therefore, we have assurance that licensing actions issued since 2008 are not relying on regulatory commitments to ensure safety.

Since the 2011 OIG Audit, there has been a heightened management and staff awareness of the proper use of regulatory commitments. Mandatory training for project managers and technical review staff on the proper use and management of regulatory commitments will continue to ensure that commitments are not misapplied and staff are aware of the appropriate change mechanisms to elevate a commitment to an obligation. The results of commitment audits indicate that only minor deficiencies have been identified through commitment audits and that NRC staff training has been effective in preventing misapplied commitments.

S. Dingbaum

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Based on the above, the NRC staff has high assurance there will be no adverse impact to safety and the NRC staff and the licensees will continue to use and manage regulatory commitments correctly without the need to conduct triennial regulatory commitment audits.

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