

September 28, 1998

SECY-98-224

FOR: The Commissioners

FROM: L. Joseph Callan /s/
Executive Director for Operations

SUBJECT: STAFF AND INDUSTRY ACTIVITIES PERTAINING TO THE
MANAGEMENT OF COMMITMENTS MADE BY POWER REACTOR
LICENSEES TO THE NRC

PURPOSE:

To inform the Commission that the staff is working with the Nuclear Energy Institute (NEI) on a revision of the NEI guidance document "Guideline for Managing NRC Commitments." The staff will also prepare guidance for its own use in managing licensing basis information and commitments from licensees.

SUMMARY:

In this paper, the staff describes activities pertaining to managing commitments made by power reactor licensees to the NRC staff. As a result of pilot applications of revised commitment management strategies, audits of commitment management programs at eight power reactor facilities, and discussions with stakeholders, the staff has determined that additional guidance is needed on managing licensing basis information and managing commitments made by licensees to the NRC. The staff plans, in conjunction with NEI, to develop industry and staff guidance. The guidance is likely to (1) describe a hierarchy of licensing basis information and related processes for controlling changes and reporting them to the NRC, and (2) revise the definition of regulatory commitment to exclude matters such as corrective actions for routine problems with plant equipment or procedures. Because of the relationships between these tasks and other initiatives associated with licensing basis issues, the relative priority between these tasks and the other initiatives, and the need to coordinate the staff's activities with stakeholders, the staff has extended, until September 1999, its schedule for completing the subject guidance documents.

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415-1314

BACKGROUND:

Various activities undertaken by the staff and industry in the early 1990's culminated in the issuance of SECY-95-300, "Nuclear Energy Institute's Guidance Document, 'Guideline for Managing NRC Commitments,'" dated December 20, 1995. Additional background information pertaining to these efforts is provided in the attachment to this paper. The NEI guidance describes a process, found acceptable by the staff, that can be used by licensees to modify or delete commitments and defines the circumstances in which interaction with the staff is appropriate. The staff stated in SECY-95-300 that licensees' commitment change processes, regardless of whether licensees implemented the NEI guideline or licensee-specific programs, would be monitored to verify that commitments are being appropriately controlled. If the NRC staff found that a significant number of licensees did not implement the NEI guidance in full, or did not have some equivalent level of control and documentation of changes to their commitments, the staff would reassess the need for additional staff guidance or rulemaking.

The NRC staff evaluated problems with licensing basis issues at Millstone and Maine Yankee and offered lessons learned from these experiences in SECY-97-036, "Millstone Lessons Learned Report, Part 2: Policy Issues," dated February 12, 1997, and SECY-97-042, "Response to OIG Event Inquiry 96-04S Regarding Maine Yankee," dated February 18, 1997. In SECY-97-205, "Integration and Evaluation of Results from Recent Lessons-Learned Reviews," dated September 10, 1997, the staff discussed the relationships of various activities pertaining to the revision of licensing basis processes such as those defined by 10 CFR 50.59 and 50.71. The Commission papers recommended that, as part of an overall revision of its oversight of licensing basis information, the staff improve the internal guidance for documenting, tracking, verifying, and controlling commitments made to the NRC staff by power reactor licensees and continue its efforts to work with industry, as described in SECY-95-300. The associated staff requirements memoranda pertaining to the Commission papers generally instructed the staff to proceed with its stated plans for improving the management of commitments made by licensees to the NRC. The staff initiated a pilot program related to commitments made to the staff in license amendment applications in March 1997, issued related interim guidance in April 1998, and completed audits of eight licensee commitment management programs in May 1998.

To address the follow-up items related to assessing licensees' commitment management systems, the Divisions of Reactor Projects of NRR performed audits at Three Mile Island, Fitzpatrick, Sequoyah, Hatch, Perry, Kewaunee, Callaway, and River Bend. The audits assessed licensee implementation of commitments made to the NRC pertaining to licensing submittals and reviewed licensee programs for reviewing and reporting to the NRC changes in commitments in accordance with the NEI guidance or licensee-specific procedures. The audits found that implementing commitments on schedule was the primary focus of licensee commitment management programs and identified only minor, isolated cases where licensees failed to fully implement commitments made to the staff. The audits found that licensees' programs continued to vary in regard to which actions described to the NRC staff were subject to programs controlling changes and to NRC notification provisions described in the NEI guidance document. The overall conclusion of the audits was that major changes to licensees' current approaches were not required to address safety concerns but that improvements could be made by licensees and the staff in the areas of consistency and control of licensing basis information.

The insights gained from the aforementioned initiatives and audits provide the basis for the staff's plans outlined in this paper. Commitment management was also a subject of discussion at the Utility/NRC Licensing Manager's Workshop held on July 20 and 21, 1998. The staff has undertaken discussions with NEI regarding changes in NEI's guidance document, "Guideline for Managing NRC Commitments," that might be mutually beneficial to licensees and the NRC staff.

DISCUSSION:

It is important to consider commitment management in its proper context as an integral part of licensees' and the NRC staff's control of each facility's licensing basis information. To address identified problems, improve internal processes, and improve its interactions with licensees, the staff plans to define more formally a hierarchy of licensing basis information and related processes in an NRR office letter (proposed Office Letter 807, "Control of Licensing Basis for Operating Reactors"). The hierarchy relates to the change control and reporting processes associated with the various elements of the licensing basis. This hierarchy is currently defined by existing regulations and staff practices and, as such, is risk-informed to the same degree as those regulations or current practices. As the regulations and related processes change to better reflect the risk insights gained in recent years, the hierarchy may also change to ensure that the most risk-significant licensing basis information is controlled by the most restrictive process and the least risk-significant licensing basis information is controlled by the most flexible process (a graded approach where the manner of the staff's involvement with a proposed change is based on risk significance). An approach to the hierarchy that has been discussed with licensees and NEI and that could be included in the pending office letter is as follows:

- (1) Obligations - conditions or actions that are legally binding requirements imposed on licensees through applicable rules, regulations, orders, and licenses. The imposition of obligations (sometimes referred to as regulatory requirements) during routine interactions with licensees should be reserved for those matters warranting prior NRC approval of changes.
- (2) Mandated Licensing Basis Documents - documents, such as the updated FSAR, the quality assurance program, the security plan, and the emergency plan, for which the NRC has established requirements for content, change control and reporting.
- (3) Regulatory Commitments - explicit, written, docketed statements by a licensee agreeing or volunteering to take specific actions that change the licensing basis of a nuclear power plant. A regulatory commitment is appropriate for matters in which the staff has a significant interest but which do not warrant either a legally binding requirement or inclusion in the updated FSAR or a program subject to a formal regulatory change control mechanism.
- (4) Non-Licensing-Basis Information - information that is exchanged during routine interactions between the NRC staff and licensees but that does not warrant being considered as part of the "licensing basis."

Although the concept of a hierarchy of licensing basis information has existed for some time, the planned emphasis on determining the proper classification of information within the hierarchy will require changes to the current practices used by licensees and the NRC staff. The staff's initial plan for Office Letter 807 is that it will describe the regulatory basis, change control mechanisms, reporting mechanisms, applicable guidance, benefits and limitations, and other characteristics of the various types of licensing basis information for operating plants. The need for such an integrated description of the NRC processes affecting the licensing basis of operating reactors was reinforced by the job task and functional analysis recently completed for positions within the Divisions of Reactor Projects in NRR. Ongoing initiatives involving the revision or clarification of regulations pertaining to the design basis and the evaluation and reporting of changes to mandated licensing basis documents (including the updated FSAR and quality assurance program) may result in significant changes to the aforementioned characteristics of major elements of the licensing basis information for operating reactors. The outcome of initiatives for improving the incorporation of risk insights into the licensing process will also need to be incorporated into the proposed office letter. The staff therefore plans to defer completion of Office Letter 807 until September 1999 such that the results from the other initiatives may be incorporated into the guidance.

As to the part of the licensing basis that involves regulatory commitments, the staff is working with NEI on a revision of the industry guidance document on managing commitments made to the NRC. The staff will ensure that the definitions used in the guidance that the staff is preparing for its own use are consistent with the industry guidance in order to facilitate discussions with licensees and to avoid misunderstandings like those described in assessments of licensing basis issues at Maine Yankee. After completing discussions with NEI and informing the Commission of the results of those discussions, it is the staff's intent to complete its work on an NRR office letter (proposed Office Letter 900, "Managing Commitments Made by Licensees to the NRC"), on how the staff should deal with regulatory commitments made to the NRC by licensees. In general, commitments will be handled within current rules and existing practices, with emphasis on consistency, on mutual understanding by the staff and licensees of proposed actions, subsequent controls, and reporting, and on improved assignment of individual and organizational responsibilities for identifying, documenting, and subsequently verifying regulatory commitments made by licensees. Ongoing initiatives to improve processes pertaining to other elements of the licensing basis information and to make the regulatory process more risk-informed and performance-based will be reflected in the commitment management guidance. Some specific issues that have been noted in previous evaluations and Commission papers are addressed in the attachment to this paper.

SCHEDULING:

The staff is working with NEI to achieve a mutually acceptable revision to the industry guidance document for the management of commitments made by licensees to the NRC. The staff made some initial comments and suggested some improvements to NEI during a public meeting and no significant areas of disagreement were mentioned. Following interactions on the industry guidance, the staff will inform the Commission of its plans to endorse the revised NEI guidance document. The staff plans to complete two NRR office letters to address the overall control of the licensing basis for power reactors and the management of commitments made by licensees to the NRC by September 30, 1999. This is a change from the staff's previous expectation of having the office letters completed by October 31, 1998. The revision of the schedule was

necessary to enable the staff to incorporate into the guidance documents the outcomes of other initiatives associated with licensing basis issues (such as change control and reporting of changes to the updated FSAR), the relative priority between these tasks and the other initiatives, and the need to coordinate the staff's activities with NEI and other stakeholders.

RESOURCES:

Resources needed to develop guidance documents and work with NEI are included in the budget. No additional resources are required.

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objections to its content.

The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections.

The Chief Information Officer has reviewed this paper for information technology/information management implications and has no objections.

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Attachment: Staff and Industry Activities
Pertaining to the Management
of Commitments

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Document Name: A:\CMTMGT.SCY

OFC	PM/PD4-1	LA/PD4-1*	TECH ED*	D/PD4-1*	AD/ADP*	D/DRPM*
NAME	WReckley/vw	CHawes	PKleene	JHannon	BBoger	JRoe
DATE	/ /98	8/ 28 /98	8/11/98	8/11/98	8/20/98	8 /18 /98
COPY	YES/NO	YES/NO	YES/NO	YES/NO	YES/NO	YES/NO

OFC	OGC*	OE*	D/NRR*	CFO*	CIO*	EDO
NAME	JMoore	JLieberman	SCollins	SBaggett	AGalante	LCallan
DATE	8 /28 /98	8/24 /98	8 /28 /98	8 /21 /98	8/19 /98	/ /98
COPY	YES/NO	YES/NO	YES/NO	YES/NO	YES/NO	YES/NO

STAFF AND INDUSTRY ACTIVITIES PERTAINING TO THE MANAGEMENT OF COMMITMENTS MADE BY POWER REACTOR LICENSEES TO THE NRC

BACKGROUND:

In the original Statements of Consideration for 10 CFR Part 54, "Requirements for Renewal of Operating Licenses for Nuclear Power Plants," dated December 13, 1991 (56 FR 64943), the Commission explained in some detail the basis for its belief that the current regulatory process provides an acceptable level of safety. Among other things, the Commission described a process whereby licensee-initiated changes to a plant's licensing basis are subject to the Commission's formal regulatory controls. This process ensures that a documented basis exists for licensee-initiated changes in the licensing basis and that Commission review and approval are obtained before implementation if the changes to the licensing basis raise an unreviewed safety question or involve changes to the technical specifications.

In SECY-92-314, "Current Licensing Basis for Operating Plants," dated September 10, 1992, the staff responded to the Commission's request to provide information and recommendations concerning compilation of the current licensing basis for operating reactors and current industry practices for updating the final safety analysis report (FSAR).¹ In conducting the activities necessary to respond to the Commission, the staff noted that some licensee commitments are not contained in the plant's FSAR and therefore are not controlled by a defined regulatory process such as 10 CFR 50.59. As a result of the findings described in SECY-92-314, the staff proposed a series of actions to further examine the issues. The staff summarized these actions in SECY-94-066, "Evaluation of Issues Discussed in SECY-92-314, 'Current Licensing Basis for Operating Plants,'" dated March 15, 1994.

¹ Although the terms "current licensing basis" and "licensing basis" are widely used in matters related to power reactors operating in accordance with the regulations in 10 CFR Part 50, the terms are not defined in Part 50 or major regulatory guidance related to Part 50. The following definition is provided by 10 CFR 54.3 pertaining to license renewal for power reactor facilities:

Current Licensing Basis (CLB) is the set of NRC requirements applicable to a specific plant and a licensee's written commitments for ensuring compliance with and operation within applicable NRC requirements and the plant-specific design basis (including all modifications and additions to such commitments over the life of the license) that are docketed and in effect. The CLB includes the regulations contained in 10 CFR Parts 2, 19, 20, 21, 26, 30, 40, 50, 51, 54, 55, 70, 72, 73, 100 and appendices thereto; orders; license conditions; exemptions; and technical specifications. It also includes the plant-specific design basis information defined in 10 CFR 50.2 as documented in the most recent final safety analysis report (FSAR) as required by 10 CFR 50.71 and the licensee's commitments remaining in effect that were made in docketed licensing correspondence such as licensee responses to NRC bulletins, generic letters, and enforcement actions, as well as licensee commitments documented in NRC safety evaluations or licensee event reports.

In January 1993, the EDO established the Regulatory Review Group (RRG) to identify areas in which licensees could be allowed increased flexibility in the regulatory process without adversely affecting the level of safety at operating plants. In SECY-94-003, "Plan for Implementing Regulatory Review Group Recommendations," dated January 7, 1994, the staff informed the Commission of its plan to implement recommendations made by the RRG. One of the ways identified in SECY-94-003 of substantially reducing unnecessary regulatory burden was to develop guidance for use by licensees to control docketed commitments that are not in the updated FSAR. Two options were presented to the Commission in SECY-94-003 to carry out this RRG recommendation: (1) to develop and promulgate staff guidance on what constitutes a "commitment" and how to control changes to commitments or (2) to endorse guidelines developed by the industry. As described below, the Nuclear Energy Institute (NEI) volunteered to develop guidelines for managing commitments.

In SECY-94-066, the staff submitted to the Commission the results of its further evaluation of the issues identified in SECY-92-314. On the issue of licensee commitments, the staff found that licensees had developed their own programs and processes that effectively managed commitments made to the NRC and controlled changes to these commitments. In its evaluation, the staff found that many licensees and NRC staff members did not have a clear understanding of when commitments can be changed without NRC interaction. This circumstance led most licensees to act conservatively, interacting with NRC staff and reporting changes to commitments regardless of safety significance — an inefficient use of both licensee and NRC resources. Therefore, in SECY-94-066, the staff reiterated the recommendation of the RRG in SECY-94-003 to develop guidance, either by the staff or by the nuclear industry, on what constitutes a commitment and the types of controls to be placed on commitments.

In SECY-95-300, "Nuclear Energy Institute's Guidance Document, 'Guideline for Managing NRC Commitments,'" dated December 20, 1995, the staff informed the Commission that it planned to inform NEI that its guidance document (Revision 2, dated December 19, 1995) provided a structured process, acceptable to the staff, that licensees could use to evaluate proposed changes to commitments made to the NRC. The staff informed NEI that the subject guidance was acceptable in a letter dated January 24, 1996. The NEI guidance describes a process that can be used by licensees to modify or delete commitments and defines the circumstances in which interaction with the staff is appropriate. The use of this guidance was intended to reduce unnecessary interactions between licensees and the staff and give licensees the confidence and flexibility to modify or delete commitments that have been shown to be inefficient or ineffective, without unnecessary staff involvement. The staff also stated in SECY-95-300 that licensees' commitment change processes, regardless of whether licensees implemented the NEI guideline or licensee-specific programs, would be monitored to verify that commitments are being appropriately controlled. If the NRC staff found that a significant number of licensees did not implement the NEI guidance in full, or did not have some equivalent level of control and documentation of changes to their commitments, the staff would reassess the need to promulgate staff guidance or initiate rulemaking.

The NRC staff evaluated licensing basis issues at Millstone and Maine Yankee and offered lessons learned from these experiences in SECY-97-036, "Millstone Lessons Learned Report, Part 2: Policy Issues," dated February 12, 1997, and SECY-97-042, "Response to OIG [Office of the Inspector General] Event Inquiry 96-04S Regarding Maine Yankee," dated February 18, 1997. In SECY-97-205, "Integration and Evaluation of Results from Recent Lessons-Learned Reviews," dated September 10, 1997, the staff discussed the relationships of various activities pertaining to the revision of licensing basis processes such as those defined by 10 CFR 50.59 and 50.71. The Commission papers recommended that, as part of an overall revision of its

oversight of licensing basis information, the staff improve the internal guidance for documenting, tracking, verifying, and controlling commitments made to the NRC staff by power reactor licensees and continue its efforts to work with industry, as described in SECY-95-300. The associated staff requirements memoranda pertaining to the Commission papers generally instructed the staff to proceed with its stated plans for improving the management of commitments made by licensees to the NRC. The staff initiated a pilot program related to commitments made to the staff in license amendment applications in March 1997, issued related interim guidance in April 1998, and completed audits of eight licensee commitment management programs in May 1998.

To address the follow-up items related to assessing licensees' commitment management systems, the Divisions of Reactor Projects of NRR performed audits at Three Mile Island, Fitzpatrick, Sequoyah, Hatch, Perry, Kewaunee, Callaway, and River Bend. The audits assessed licensee implementation of commitments made to the NRC pertaining to licensing submittals and reviewed licensee programs for reviewing and reporting to the NRC changes in commitments in accordance with the NEI guidance or licensee-specific procedures. The audits found that implementing commitments on schedule was the primary focus of licensee commitment management programs and identified only minor, isolated cases where licensees failed to fully implement commitments made to the staff. The audits found that licensee programs continued to vary in regard to which actions described to the NRC staff were subject to programs controlling changes and to NRC notification provisions described in the NEI guidance document. The overall conclusion of the audits was that major changes to licensees' current approaches were not required to address safety concerns but that improvements in consistency and in control of licensing basis information could be made, and would benefit both the industry and the NRC staff.

The insights gained from the aforementioned initiatives and audits provided the basis for the staff's plans outlined in this paper. Commitment management was also a subject of discussion at the Utility/NRC Licensing Manager's Workshop held on July 20 and 21, 1998. The staff has undertaken discussions with NEI regarding changes in NEI's guidance document, "Guideline for Managing NRC Commitments," that might be mutually beneficial to licensees and the NRC staff.

DISCUSSION:

It is important to consider commitment management in its proper context as an integral part of licensees' and NRC staff's control of each facility's licensing basis information. The staff believes that a hierarchy of licensing basis information has traditionally existed in which selected information (including the associated design feature or operating practice) was subject to rigid processes governing change control and reporting requirements. Other information was treated with much less formality. The importance of this hierarchy is that the related processes developed and implemented by the NRC and licensees address each level differently. The problems that have arisen, such as those noted in the various lessons-learned reports on issues at Maine Yankee and Millstone, are, at least partly, because the staff has not had effective guidance for establishing and maintaining licensing basis information.

The staff will define more formally a hierarchy of licensing basis information and related processes in an NRR office letter (proposed Office Letter 807, "Control of Licensing Basis for Operating Reactors"). The hierarchy relates to the change control and reporting processes associated with the various elements of the licensing basis. This hierarchy is currently defined by existing regulations and staff practices and, as such, is risk-informed to the same degree as

those regulations or current practices. As the regulations and related processes change to better reflect the risk insights gained in recent years, the hierarchy may also change to ensure that the most risk-significant licensing basis information is controlled by the most restrictive process and the least risk-significant licensing basis information is controlled by the most flexible process (a graded approach where the manner of the staff's involvement with a proposed change is based on risk significance). An approach to the hierarchy that has been discussed with licensees and NEI and that could be included in the pending office letter is as follows:²

- (1) Obligations - conditions or actions that are legally binding requirements imposed on licensees through applicable rules, regulations, orders, and licenses (including technical specifications and license conditions). The imposition of obligations (sometimes referred to as regulatory requirements) during routine interactions with licensees should be reserved for matters that satisfy the criteria of 10 CFR 50.36 or are otherwise found to be of high safety or regulatory significance. In such matters concerning the adequate protection of the public health and safety, changes cannot be made without prior NRC approval. Some processes such as rulemaking that impose regulatory obligations are currently well defined by regulations, management directives, and other office-level guidance documents.
- (2) Mandated Licensing Basis Documents - documents, such as the updated FSAR, the quality assurance program, the security plan, and the emergency plan, for which the NRC has established requirements for content, change control and reporting. What information should be included in these documents is specified in applicable regulations and regulatory guides. The change control mechanisms and reporting requirements are defined by regulatory processes such as 10 CFR 50.59, 50.54, and 50.71.
- (3) Regulatory Commitments - explicit, written, docketed statements by a licensee agreeing or volunteering to take specific actions that change the licensing basis of a nuclear power plant. A regulatory commitment is appropriate for matters in which the staff has a significant interest but which do not warrant either a legally binding requirement or inclusion in the updated FSAR or a program subject to a formal regulatory change control mechanism. Control of such commitments in accordance with licensee programs is acceptable provided those programs include controls for evaluating changes and reporting them to the NRC to maintain the accuracy of the "licensing basis" on the docket.
- (4) Non-Licensing-Basis Information - information that is exchanged during routine interactions between the NRC staff and licensees but that does not warrant being considered as part of the "licensing basis." Information provided to NRC staff in regional offices or headquarters pertaining to corrective actions for routine problems with plant equipment or procedures would likely fall into this category. The information should be controlled in accordance with normal licensee programs. There should be mutual understanding by licensees and NRC staff that such information may not need to be updated in docketed correspondence.

² The exact terminology may change as discussions with NEI continue.

As to the part of the licensing basis that involves regulatory commitments, the staff is working with NEI on a revision of the industry guidance document on managing commitments made to

the NRC.³ The definition of a regulatory commitment will likely be revised in the NEI guidance because the staff found during the audits of licensee programs that the current definition could be interpreted to capture a large amount of ancillary or non-licensing-basis information (such as routine corrective actions reported to the NRC in licensee event reports and other correspondence). The staff will ensure that the definitions it uses in NRC guidance are consistent with the industry guidance in order to facilitate discussions with licensees and to avoid future misunderstandings.

After completing discussions with NEI, it is the staff's intent to complete its work on an NRR office letter (proposed Office Letter 900, "Managing Commitments Made by Licensees to the NRC), on how the staff should deal with regulatory commitments made to the NRC by licensees. In general, commitments will be handled within current rules and existing practices, with emphasis on consistency, on mutual understanding by the staff and licensees of proposed actions, subsequent controls, and reporting, and on improved assignment of individual and organizational responsibilities. Some problem areas that have been noted in previous evaluations and Commission papers are addressed below:

Enforcement

An issue identified as part of the Maine Yankee and Millstone activities involved the inability to "enforce" commitments. The staff believes that this problem will be addressed by its efforts to explain the relationship of various elements of the licensing basis and to spell out the benefits and drawbacks of using each of those elements to appropriately place specific information in the hierarchy of licensing basis information. The staff has initiated a review of the enforcement policy with special focus on non-escalated violations and non-risk significant issues. The staff expects to submit a significant revision of the enforcement policy for Commission approval in the near future. As to how regulatory commitments can fit into the NRC's current enforcement process, NUREG-1600, "General Statement of Policy and Procedure for NRC Enforcement Actions," Rev. 1, defines a notice of deviation (NOD) as follows:

Notices of Deviation are written notices describing a licensee's failure to satisfy a commitment where the commitment involved has not been made a legally binding requirement. A Notice of Deviation requests a licensee to provide a written explanation or statement describing corrective steps taken (or planned), the results achieved, and the date when corrective action will be completed.

The staff acknowledges that there has been some confusion associated with using NODs in the NRC's inspection and enforcement programs. The staff again believes that this is largely due to the lack of a clearly defined and well-integrated strategy for dealing with a facility's licensing basis and some of its elements. The NOD can, however, be the proper tool when looking at regulatory commitments as an element within the hierarchy of licensing basis information. An NOD is useful at the regulatory commitment level of the hierarchy; it is less severe than a notice of violation but still allows the staff to request information from a licensee if the implementation

³ NEI has stated that the identifier "NEI 98-05" will be assigned to the revised commitment management guidance document

of an action was not consistent with the mutually agreed-upon commitment. The proposed definition of regulatory commitments to denote only actions that affect the licensing basis would distinguish those cases for which the staff should consider an NOD from those cases in which the failure to perform an action reported to the staff should not be pursued unless a regulatory requirement was not satisfied (e.g., the failure to perform an action was significant enough to be considered a violation of the requirements of Appendix B to 10 CFR Part 50, or the failure to perform an action rendered a system, structure, or component being unable to fulfil its safety function; in such cases consideration of a notice of violation may be appropriate).

The proposed definitions and approach could also be useful in the next step in the regulatory process, if necessary, to force compliance with a regulatory commitment; that is the NRC may order a licensee to complete the action, without being burdened by the need for a formal regulatory analysis in accordance with 10 CFR 50.109, "Backfitting." The proposed definition of a regulatory commitment would therefore clarify the exception in 10 CFR 50.109(a)(4)(i) such that a backfit analysis is not required if the staff's actions are needed to ensure compliance with a facility's licensing basis.⁴

As part of the follow-up to Maine Yankee and Millstone, the staff initiated a pilot program in which important commitments pertaining to the staff's review of licensing actions for some licensees were made into legally binding requirements by adding conditions to operating licenses in a newly created appendix to the licenses. This practice, as implemented by the staff, introduced unwarranted administrative burdens. Under the overall licensing basis and commitment management approach described in this paper, the escalation of commitments into license conditions, requiring prior NRC approval of subsequent changes, would be reserved for matters that satisfy the criteria for inclusion in technical specifications by 10 CFR 50.36 or inclusion in the license to address a significant safety issue. The staff plans to discontinue escalating commitments on technical matters that do not satisfy the above criteria into license conditions; licenses that have been amended to capture routine commitments may be revised in future license amendment requests to delete the special appendix. If the staff determines that a license condition imposed in a recently created appendix should be maintained as an obligation as described in the hierarchy of licensing basis information, the condition will be added to the operating license. This was the practice the NRC used before the pilot programs and interim guidance on commitment management.

Ongoing initiatives to improve processes pertaining to major elements of the licensing basis information for operating reactors and to make the regulatory process more risk-informed and performance-based will need to be reflected in the commitment management guidance. The NRC staff believes, however, that keeping regulatory commitments as an element of licensing basis information will continue because they support the overall licensing process by adding flexibility, improving efficiency, and maintaining the flow of information between the staff and licensees. These advantages, combined with the audit findings and the staff's plans, as outlined in the remainder of this paper, to address identified weaknesses in its past handling of

⁴ A backfit analysis is not required where the Commission or staff, as appropriate, finds and declares, with an appropriate documented evaluation, that the following exception (50.109(a)(4)(i)) has been satisfied:

That a modification is necessary to bring a facility into compliance with a license or the rules or orders of the Commission, or into conformance with written commitments by the licensee.

commitments, outweigh concerns associated with the fact that a licensee may not be “legally-bound” to fulfil and subsequently control an action classified as a regulatory commitment.

The staff plans, for the time being, to continue imposing conditions on license amendments that involve, as a vital element of the staff’s approval, the subsequent placement of information in a particular mandated licensing basis document. Commonly, this type of amendment relocates requirements from a facility’s technical specifications to its updated FSAR. The staff believes that it is prudent to continue this practice to avoid confusion about the proper control of the relocated provisions pending the submittal of the updated FSAR or another mandated licensing basis document. The condition will be imposed along with other legally binding aspects of the amendment (e.g., when the amendment is effective and when the amendment must be implemented) on the amendment page which is signed by an authorized member of the NRR staff. Guidance being developed for use by the NRC staff will address what types of licensing basis information should be incorporated into various documents such as the updated FSAR.

Identification

One problem identified during earlier evaluations in the area of commitment management and reaffirmed during the recent audits and through discussions at the Utility/NRC Licensing Manager’s Workshop is that both licensees and the staff disagree among themselves as to what actions constitute commitments and what information is part of a facility’s licensing basis. The staff is currently working with NEI to agree on a definition of regulatory commitment and on factors to consider in deciding whether information is part of the licensing basis. The internal guidance to be prepared for the staff will be consistent with the terminology worked out with NEI. Both industry and NRC staff guidance will stress the importance of clearly stating, in licensing submittals and the resultant NRC safety evaluations, what actions are considered regulatory commitments.

Verification

The staff will include mechanisms for the periodic verification of commitments into the guidance that is being developed. Commitments will likely be verified as part of a more fully integrated program for evaluating licensing basis issues, including the updated final safety analysis report, and changes made in accordance with 10 CFR 50.59. Such verifications will be reflected in the normal functions of NRR and regional personnel and the NRC inspection program. Because of the limited safety implications of the changes that may properly be made without prior NRC approval and to allocate the proper resources given the risk significance, commitments will likely be verified by sampling. The sampling approach is consistent with the NRC’s practices for inspecting a licensee’s compliance with other elements of a facility’s licensing basis. The staff could verify specific commitments at any time if deemed appropriate to address specific safety issues.

Tracking

The findings of the OIG pertaining to licensing issues for Maine Yankee included the staff’s failure to track commitments and the staff’s reliance on licensees for licensing basis information. Modifications have been made to the Workload Information and Scheduling Program (WISP) to allow entry of information to track commitments during the staff’s review of licensing submittals. This tool has generally been found to be an excessive administrative burden by the NRR staff and has not been widely used. In the interest of achieving our goals, tracking commitments while not investing more resources than warranted, this process is being

modified. Instead of tracking every commitment, the staff plans to sample licensee programs periodically to ensure that licensees are effectively implementing and controlling regulatory commitments. This verification is a reasonable alternative to having the staff develop and maintain a tracking system that is redundant to each licensee's system. In addition, improvements in information technology, such as the pending implementation of the ADAMS document management system, will decrease the need for dedicated data base systems such as the one added to WISP for commitment tracking. Information technology may also evolve to support the conversion of more licensing basis documents to electronic formats in the future, decreasing reliance on licensees for information about the licensing basis of nuclear power plants.

Topical Reports

The investigation conducted by the OIG following the identification of problems at Maine Yankee concluded that the staff had not ensured that an NRC-approved topical report referenced in a Maine Yankee licensing submittal was used in accordance with the conditions and limitations contained in the staff's safety evaluation report for that topical report. The staff believes that this problem involves a part of the licensing basis that is not normally considered to involve regulatory commitments made by licensees to the NRC. Although the staff plans to address the subject of topical reports in the proposed NRR Office Letter 807, "Control of Licensing Basis for Operating Reactors," the resolution of issues pertaining to topical reports will be pursued separately from the initiatives pertaining to commitment management. The staff is developing an action plan to consolidate the activities initiated in response to problems at Maine Yankee. The action plan will, as necessary, include the development and implementation of actions for verifying licensees' conformance to conditions included in staff safety evaluation reports for topical reports.

License Renewal

The staff has assessed the plans described in this paper in relation to license renewal and has determined that the guidance under development will not interfere with the license renewal process. The license renewal reviews of age-related issues will establish, as necessary, revised licensing basis information, which will generally either establish new obligations or be contained in mandated licensing basis documents. This is the same approach used during initial licensing of a facility in accordance with 10 CFR Part 50. As for those aspects of the licensing basis that are not changed during the license renewal process, the staff believes that both the licensees and the staff will benefit during the term of the renewed license from the more structured approach to licensing basis information that is described in this paper. The staff does not believe that changes to 10 CFR Parts 50 or 54 are needed to implement the actions described in this paper.

SUMMARY OF PROPOSED ACTIONS:

The staff plans to continue its interactions with NEI to achieve a mutually acceptable revision to the guidance document, NEI-98-05, for the management of regulatory commitments. The staff will inform the Commission of its plans to endorse the revised NEI guidance document.

The staff plans to prepare two NRR office letters to address the overall control of the licensing basis for power reactors and the management of commitments made by licensees to the NRC. The planned completion date of September 1999 for these guidance documents reflects the relationships between these tasks and other initiatives associated with licensing basis issues, the relative priority between these tasks and the other initiatives, and the need to coordinate the staff's activities with stakeholders.