

November 26, 2008

MEMORANDUM TO: Bruce A. Boger  
Associate Director for Reactor Oversight and Licensing  
Office of Nuclear Reactor Regulation

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

SUBJECT: ASSESSMENT OF REGULATORY PROCESSES THAT UTILIZE  
REGULATORY COMMITMENTS

In a memorandum dated February 14, 2008 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML073310418), the Office of Nuclear Reactor Regulation (NRR), Division of Operating Reactors (DORL), provided recommendations to you regarding the commitment management audit process described in NRR Office Instruction LIC-105, "Managing Regulatory Commitments Made by Licensees to the NRC." One of the recommendations suggested that an assessment be performed of the regulatory processes that utilize regulatory commitments to determine whether the use of commitments in licensing activities should be reduced or eliminated and replaced with enforceable processes, such as license conditions. This recommendation was entered into the NRR Corrective Action Program (Item No. 2008-0002) and was assigned to DORL for action via Yellow Ticket Y020080109.

DORL has completed the assessment as detailed in the enclosure to this memorandum. Based on the assessment, the DORL staff concludes that the current use of licensee commitments, as described in the associated NRR Office Instructions, is appropriate. Consistent with the guidance in SECY-98-224, "Staff and Industry Activities Pertaining to the Management of Commitments Made by Power Reactor Licensees to the NRC," and the definition of "obligation" in NRR Office Instruction LIC-100, "Control of Licensing Bases for Operating Reactors," escalating a licensee commitment into a legally binding regulatory requirement should be reserved for matters that warrant: (1) inclusion in the technical specifications based on the criteria in 10 CFR 50.36; or (2) inclusion in the license based on determination by the NRC staff that the issue is of high safety or regulatory significance. No changes to the current guidance or usage of licensee commitments are recommended.

Based on completion of the assessment, I recommend that Yellow Ticket Y020080109 and the associated Corrective Action Program item be closed. In addition, it is recommended that a short discussion and link to the enclosed assessment be included in a future "Have I Got News For You" email from the NRR Office Director. This will serve as a training opportunity since the assessment provides an overview on proper use of regulatory commitments for the various NRR regulatory processes.

Enclosure: As stated

CONTACT: Rick Ennis, DORL/NRR  
301-415-1420

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**NRR Executive Team Concurrence**

I agree that Yellow Ticket Y020080109 and NRR Corrective Action Program Item No. 2008-0002 can be closed.

I also agree that the enclosed assessment be included in a future "Have I Got News For You" email from the NRR Office Director.

      /ra/        
Bruce A. Boger  
Associate Director for Reactor Oversight and Licensing  
Office of Nuclear Reactor Regulation

      11/26/08        
Date

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**NRR Executive Team Concurrence**

I agree that Yellow Ticket Y020080109 and NRR Corrective Action Program Item No. 2008-0002 can be closed.

I also agree that the enclosed assessment be included in a future "Have I Got News For You" email from the NRR Office Director.

/ra/  
 Bruce A. Boger  
 Associate Director for Reactor Oversight and Licensing  
 Office of Nuclear Reactor Regulation

11/26/08  
 Date

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NAME	REnnis	ABaxter	HChernoff	JGiitter	BBoger	JGiitter
DATE	11/25/08	11/12/08	11/20/08	11/24/08	11/26/08	11/26/08

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## **ASSESSMENT OF REGULATORY PROCESSES THAT UTILIZE REGULATORY COMMITMENTS**

### **1.0 PURPOSE**

This assessment completes the actions assigned to the Office of Nuclear Reactor Regulation (NRR), Division of Operating Reactors (DORL), in response to Yellow Ticket Y020080109. Specifically, the Yellow Ticket required that DORL:

Perform an assessment of DORL regulatory processes that utilize regulatory commitments to determine whether the use of commitments in licensing activities should be reduced or eliminated and replaced with enforceable processes, such as license conditions.

### **2.0 BACKGROUND**

In response to issues identified in 2002 at Davis-Besse Nuclear Power Station, regarding reactor pressure vessel (RPV) head degradation, the Nuclear Regulatory Commission's (NRC's) Executive Director for Operations directed the formation of a lessons-learned task force (LLTF). The objective of the LLTF was to independently evaluate the NRC's regulatory processes related to assuring RPV head integrity in order to identify and recommend areas for improvement that may be applicable to either the NRC or the nuclear industry.

On September 30, 2002, the Davis-Besse LLTF issued its final report (Agencywide Documents Access and Management System (ADAMS) Accession No. ML022760414). As discussed in Section 3.3.7 of the report, "Licensing Process Guidance and Implementation," the LLTF concluded that, in a number of instances, the NRC did not provide adequate licensing process guidance to the NRC staff or did not implement existing guidance. With respect to regulatory commitments, the LLTF found that the NRC guidance involving the review of licensee changes to its regulatory commitments and auditing these licensee programs was not implemented. To address this issue, the LLTF provided the following recommendation:

The NRC should fully implement Office Letter 900, "Managing Commitments Made by Licensees to the NRC," or revise the guidance if it is determined that the audit of licensee's programs is not required. Further, the NRC should determine whether the periodic report on commitment changes submitted by licensees to the NRC should continue to be submitted and reviewed.

As discussed in a memorandum dated August 26, 2004 (ADAMS Accession No. ML042320568), the above LLTF recommendation was closed out based on revisions to the guidance associated with NRR/DORL Project Manager audits of licensees' commitment management programs. This revised guidance was incorporated in Office Instruction LIC-105, "Managing Regulatory Commitments Made by Licensees to the NRC," which superseded the earlier guidance in Office Letter 900.

As documented in a memorandum dated June 30, 2005 (ADAMS Accession No. ML051810516), an effectiveness review was performed to assess the implementation of the above LLTF recommendation. The effectiveness review assessed the results of the commitment management audits that had been performed in the first year following issuance of

Enclosure

LIC-105 and made several recommendations for further follow-up. The follow-up actions were issued as Yellow Tickets Y020050131 and Y020050132 which required a determination as to whether the commitment management audit process described in LIC-105 was an effective use of NRC resources and whether changes to LIC-105 were needed.

The follow-up actions in response to Yellow Tickets Y020050131 and Y020050132 were addressed in a memorandum dated February 14, 2008 (ADAMS Accession No. ML073310454). The DORL staff concluded that the audit process in LIC-105 effectively uses NRC resources and that the audits are an effective way to verify licensee management of commitments. Several changes to LIC-105 were recommended to improve program efficiency. The memorandum also noted that some DORL staff members recommended that the audits should be eliminated because commitments are not enforceable or legally binding; may be changed by licensees without prior NRC approval; and because no significant deficiencies had been identified in audits to date. Based on these comments, the DORL staff recommended that an assessment be performed of the regulatory processes that utilize regulatory commitments to determine whether the use of commitments in licensing activities should be reduced or eliminated and replaced with enforceable processes, such as license conditions. This recommendation was entered into the NRR Corrective Action Program (Item No. 2008-0002) and was assigned to DORL for action via Yellow Ticket Y020080109.

### **3.0 REGULATORY HIERARCHAL STRUCTURE**

NRR Office Instruction LIC-100, "Control of Licensing Bases for Operating Reactors," Revision 1, dated January 7, 2004 (ADAMS Accession No. ML033530249), states that "[t]he licensing bases for a nuclear power reactor can be represented by a few categories of information that form a hierarchy structure in terms of associated change controls and reporting requirements." LIC-100 lists obligations, mandated licensing bases documents and regulatory commitments as the categories in this hierarchy and defines these categories as follows:

- (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 [Section 50.36 of Title 10 of the *Code of Federal Regulations* (10 CFR)] or are otherwise found to be of high safety or regulatory significance. The major distinction between obligations and other parts of the licensing bases is that changes generally cannot be made without prior NRC approval.
- (2) Mandated Licensing Bases Documents - documents, such as the updated FSAR [Final Safety Analysis Report], 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 regulations such as 10 CFR 50.59, 50.54, and 50.71.

- (3) Regulatory Commitments - explicit statements to take a specific action agreed to, or volunteered by, a licensee and submitted in writing on the docket to the NRC. 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, when appropriate, reporting them to the NRC.

The above hierarchal structure for the various elements in a nuclear power plants' licensing basis was discussed in SECY-98-224, "Staff and Industry Activities Pertaining to the Management of Commitments Made by Power Reactor Licensees to the NRC," dated September 28, 1998 (ADAMS Accession No. ML992870043). The SECY paper stated that:

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.

With respect to the issue of whether licensee commitments should be elevated in the hierarchy to obligations (e.g., license conditions), SECY-98-224 stated that:

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. [emphasis added]

The DORL staff believes that the current definition in LIC-100 of an "obligation," as quoted above, provides a reasonable set of criteria for determining whether a regulatory requirement should be imposed during routine interactions with licensees. As such, and consistent with the NRC staff conclusions in SECY-98-224, escalating a licensee commitment into a legally binding regulatory requirement should be reserved for matters that warrant: (1) inclusion in the technical specifications based on the criteria in 10 CFR 50.36; or (2) inclusion in the license based on determination by the NRC staff that the issue is of high safety or regulatory significance. With a focus on these criteria, the DORL staff assessed the various regulatory processes to determine whether the use of commitments in licensing activities should be reduced or eliminated and replaced with enforceable processes, such as license conditions.

#### **4.0 ASSESSMENT OF REGULATORY PROCESSES**

Sections 4.1 through 4.10 below provide DORL's assessment of the regulatory processes commonly used by licensees in changing the various elements of a nuclear power plants' licensing basis.

##### **4.1 License Amendments**

Regulatory requirements related to the amendment of a facility operating license, including the appended technical specifications, are contained in 10 CFR 50.90, "Application for amendment of license, construction permit, or early site permit," 10 CFR 50.91, "Notice for public comment; State consultation," and 10 CFR 50.92, "Issuance of amendment." NRR guidance is contained in Office Instruction LIC-101, "License Amendment Review Procedures," Revision 3, dated February 9, 2004 (ADAMS Accession No. ML040060258).

Section 4.4 of LIC-101 provides the following discussion regarding regulatory commitments:

During the review of license amendment applications, the staff will base its findings on a variety of information provided by the licensee. Some information considered important by the reviewer will not be addressed specifically in the affected technical specifications (which would require prior NRC approval of subsequent changes). Those matters considered important to the staff but not requiring the staff's prior approval of subsequent changes have been traditionally referred to as commitments. 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. A hierarchy of licensing-basis information relating to the change control and reporting processes is described in LIC-100, "Control of Licensing Bases for Operating Reactors."

As to the part of the licensing basis that involves regulatory commitments, the staff's acceptance of guidance issued by the Nuclear Energy Institute (NEI) on managing commitments made to the NRC is described in Regulatory Issue Summary (RIS) 2000-17, "Managing Regulatory Commitments Made by Power Reactor Licensees to the NRC Staff." Additional guidance related to regulatory commitments is provided in Office Instruction LIC-105, Managing Commitments Made by Licensees to the NRC."

The escalation of an action proposed by a licensee as a commitment into a license condition, requiring prior NRC approval of subsequent changes, should 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. Routine commitments on technical matters that do not satisfy the above criteria for license conditions should be discussed in the staff's safety evaluation but should not be escalated into formal 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 may be added to the operating license (license conditions are located in Section 2.C of most operating licenses).

For the time being, the staff should 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 UFSAR. 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 (usually listed as item 3) that is signed by an authorized member of the NRR staff. These conditions are generally not added to the operating license (i.e., Section 2.C).

DORL staff concludes that the current guidance in LIC-101 adequately describes when licensee commitments should be escalated into legally binding requirements. As such, no changes to the license amendment review process are necessary regarding use of licensee regulatory commitments.

#### 4.2 Relief Requests

Regulatory requirements related to requests for relief (typically from the requirements of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code)) are contained in 10 CFR 50.55a, "Codes and standards." NRR guidance is contained in Office Instruction LIC-102, "Relief Request Reviews," Revision 1, dated January 26, 2005 (ADAMS Accession No. ML042780148).

LIC-102 does not contain any discussion regarding regulatory commitments. However, Section 2.1.2 of LIC-100 states that:

The term commitment is sometimes used to describe a proposed alternative to a Code requirement. Although regulatory commitments (see Section 4) can be made as part of a relief request, the proposed alternatives submitted as part of the licensee's request for relief generally become part of the licensee's ISI [inservice inspection] or IST [inservice test] programs and are therefore obligations (i.e., changing from one alternative to another alternative would require NRC approval).



The DORL staff performed a search in ADAMS of safety evaluations for relief requests to determine to what extent licensee commitments are utilized as part of the staff's acceptance of the proposed relief or alternative. The search indicates that only a very small percentage of relief request safety evaluations discuss licensee commitments. For the safety evaluations that were reviewed, the licensee commitments generally were not used in the basis for the NRR staff acceptance of the proposed relief or alternative. Based on this review and the guidance in LIC-100, the DORL staff concludes that no changes to the relief request review process are necessary regarding use of licensee regulatory commitments.

#### 4.3 Orders

Regulatory requirements related to orders are contained in 10 CFR 2.202, "Orders." NRR guidance is contained in Office Instruction LIC-106, "Issuance of Safety Orders," Revision 0, dated December 17, 2003 (ADAMS Accession No. ML032590319).

Section 2.3 of LIC-100 states that "[a]n order may be used to confirm an action committed to by the licensee. This type of order is called a confirmatory order." Similarly, Section 4.3.1 of LIC-106 states that one of the sections to be included in an order should "confirm the licensee's commitments to take certain actions if the licensee consents to a confirmatory order."

When the NRC staff includes a licensee commitment in an order, the commitment becomes an obligation (i.e., legally binding requirement). As such, the DORL staff concludes that no changes are necessary regarding use of licensee regulatory commitments for issuance of orders.

#### 4.4 Exemptions

Regulatory requirements related to exemptions are contained in 10 CFR 50.12, "Specific exemptions." NRR guidance is contained in Office Instruction LIC-103, "Exemptions from NRC Regulations," Revision 1, dated July 6, 2006 (ADAMS Accession No. ML052590073).

LIC-103 does not contain any discussion regarding regulatory commitments.

The DORL staff performed a search in ADAMS to determine to what extent licensee commitments are utilized as part of the staff's acceptance of the proposed exemptions. The staff did not identify any exemptions that were approved based on a licensee commitment. As such, the DORL staff concludes that no changes are necessary regarding use of licensee regulatory commitments for issuance of exemptions.

#### 4.5 License Transfers

Regulatory requirements related to license transfers are contained in 10 CFR 50.80, "Transfer of licenses." NRR guidance is contained in Office Instruction LIC-107, "Procedures for Handling License Transfers," Revision 0, dated March 21, 2002 (ADAMS Accession No. ML020520222).

LIC-107 does not contain any discussion regarding regulatory commitments.

As discussed in Section 2.1.4 of LIC-100, license transfers are approved using an order in accordance with 10 CFR 2.202. In addition, license transfers often require a license amendment in accordance with 10 CFR 50.90. Based on the discussion above for orders (Section 4.3) and license amendments (Section 4.1), the DORL staff concludes that no changes are necessary regarding use of licensee regulatory commitments for issuance of license transfers.

#### 4.6 Quality Assurance Program Reviews

Regulatory requirements related to quality assurance (QA) programs are contained in 10 CFR 50.34(b)(6)(ii), 10 CFR 50.54(a), and Appendix B to 10 CFR Part 50, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants." There is no NRR Office Instruction specifically related to processing of QA program reviews.

As discussed in Section 3.3 of LIC-100:

The change-control process for QA programs is defined in 10 CFR 50.54(a). The licensee is required to evaluate changes to the QA program and determine if the change reduces the commitments in the program description as accepted by the NRC (note the term commitment in this rule is different from "regulatory commitment" that is discussed in Section 4). Criteria are provided in 10 CFR 50.54(a) to help determine if a change should be considered a reduction in commitment (these include the use of NRC-approved QA standards and alternatives approved by an NRC safety evaluation). If the change is not a reduction in commitment, the licensee may implement without consulting the NRC staff. Changes that are determined to be a reduction in commitment need to be submitted to the NRC and receive NRC approval prior to implementation.

Licensee commitments made with respect to their QA programs typically relate to compliance with specific regulatory guidance or industry standards related to QA. Since these commitments are typically embodied within the QA program, and 10 CFR 50.54(a) provides criteria to determine whether a change in commitment needs prior NRC approval, it is appropriate that the NRC decision making process for a proposed QA program change be based, in part, on the commitments. As such, the DORL staff concludes that no changes are necessary regarding use of licensee commitments for QA program reviews.

#### 4.7 Emergency Plan Reviews

Regulatory requirements related to emergency plans are contained in 10 CFR 50.47, "Emergency plans," 10 CFR 50.54(q), and Appendix E to 10 CFR Part 50, "Emergency Planning and Preparedness for Production and Utilization Facilities." There is no NRR Office Instruction specifically related to reviewing licensee submittals of emergency plans.

As discussed in memorandums from NRR/DORL to the Office of Nuclear Security and Incident Response (NSIR) dated March 28, and May 21, 2008 (ADAMS Accession Nos. ML080590198 and ML081410466, respectively), NRR and NSIR have recently changed the process for review of emergency plan and emergency action level reviews. As such the NRR/DORL staff review regarding use of regulatory commitments focused on those safety evaluations issued since March 28, 2008, which approved changes to emergency plans (submitted pursuant to

10 CFR 50.54(q)) or emergency action levels (submitted pursuant to Section IV.B of Appendix E to 10 CFR Part 50). Of the four safety evaluations that were reviewed, only one discussed commitments. However, the "commitments" were to establish certain emergency response staffing levels as stated in the proposed emergency plan. Since emergency plans are programs subject to a formal regulatory change control mechanisms, the discussion in the safety evaluation was merely a statement of actions the licensee planned to incorporate into the plan and are not considered "regulatory commitments" (see definition of "regulatory commitment" stated in Section 3.0 above). Note, in cases where licensees haven't explicitly made a regulatory commitment, NRR reviewers should avoid use of the word commitment in safety evaluations to avoid possible misinterpretation.

Based on the above, the DORL staff concludes that no changes are necessary regarding use of licensee commitments for emergency plan reviews.

#### 4.8 Security Plan Reviews

Regulatory requirements related to security plans are contained in 10 CFR 50.54(p) and 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage." There is no NRR Office Instruction specifically related to reviewing licensee submittals of security plans.

Security plan changes requiring prior NRC approval are processed as license amendments as required by 10 CFR 50.54(p). In addition, following September 11, 2001, the NRC staff has issued a number of orders to impose additional security requirements on licensees. Based on the discussion above for license amendments (Section 4.1) and orders (Section 4.3), the DORL staff concludes that no changes are necessary regarding use of licensee regulatory commitments for security plan reviews.

#### 4.9 Fire Protection Program Reviews

Regulatory requirements related to fire protection programs are contained in 10 CFR 50.48, "Fire protection," and Appendix R to 10 CFR Part 50, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979." There is no NRR Office Instruction specifically related to reviewing licensee submittals of fire protection programs.

As discussed in Section 3.6 of LIC-100, changes to fire protection programs requiring prior NRC approval are processed as exemptions or as license amendments. Based on the discussion above for license amendments (Section 4.1) and exemptions (Section 4.4), the DORL staff concludes that no changes are necessary regarding use of licensee regulatory commitments for fire protection plan reviews.

#### 4.10 Review of Responses to Generic Communications

The various types of generic communication products currently issued by the NRC are described in Regulatory Issue Summary (RIS) 99-01, "Revisions to the Generic Communications Program," dated October 1, 1999 (ADAMS Accession No. ML030940738). The types of generic communications currently issued are bulletins, generic letters, RISs, and information notices. NRR guidance is contained in Office Instruction LIC-503, "Generic Communications Affecting

Nuclear Reactor Licensees," Revision 2, dated November 29, 2004 (ADAMS Accession No. ML043150304).

The following discussion on each of the types of generic communications is based on the information in Section 3, "Background," of LIC-503:

**Bulletin:** A bulletin is used to address significant issues having generic applicability that also have great urgency. A bulletin requests information from, requests specified action by, and requires a written response in accordance with Section 182.a. of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f), from the addressees regarding matters of safety, safeguards, or environmental significance. The addressees may be asked to take compensatory action that is commensurate with the urgency of the issue being addressed, and provide requested information and perform and submit analyses by a specified time. A bulletin may not request continuing or long term actions. **A bulletin may request new or revised licensee commitments that are based on analyses performed and licensee-proposed corrective actions; a bulletin may not require licensee commitments.** [emphasis added]

**Generic Letter:** A generic letter is used to address an emergent or routine technical issue having generic applicability that NRC staff has interacted with the nuclear industry on and concluded that a generic communication is an appropriate means to effect resolution, or a risk-significant compliance matter that NRC staff has concluded should be brought to the attention of the nuclear industry without extensive prior interaction. A generic letter may request information from and/or request specified action by the addressees regarding matters of safety, safeguards, or environmental significance. The addressees may be asked to accomplish the actions and report their completion by letter, with or without prior NRC approval of the action taken. A generic letter may request that analyses be performed and, as appropriate, submitted for staff review, that descriptions of proposed corrective actions and other information be submitted for staff review, and that corrective actions be taken by a specified time. **A generic letter may request new or revised licensee commitments based on analyses performed and proposed corrective actions but may not require licensee commitments.** [emphasis added]

**Regulatory Issue Summary:** A regulatory issue summary is an informational document that is used to communicate with the nuclear industry on a broad spectrum of matters having generic applicability. **It does not involve a request for action or information unless the request is strictly voluntary.** [emphasis added]

**Information Notice:** An information notice is primarily used to inform the nuclear industry of recently-identified, significant operating experience that may have generic applicability. Licensees are expected to review the information for applicability to their facilities or operations and consider actions, as appropriate, to avoid similar problems. **An information notice shall not convey or imply new requirements or new interpretations, and shall not request information or action.** [emphasis added]

Since the purpose of this review is to assess the regulatory processes that utilize regulatory commitments, the DORL staff review focused on bulletins and generic letters. As discussed in Section 6.8 of LIC-100:

Generic communications are a tool for the NRC staff to request action by or information from licensees. They do not, in and of themselves, establish or revise the licensing bases for the regulated facilities. The generic letter or bulletin may, through its requested action or even its requested information, lead to a "reinterpretation" of a regulatory requirement that may have (from the licensee's perspective) the same effect as a revision to the licensing bases. Any such reinterpretations are, as mentioned above, subject to the backfit provisions of 10 CFR 50.109. **It is, however, the licensee's response to a generic letter or bulletin that revises the licensing bases for an operating plant by including a regulatory commitment or revision to another licensing bases element.** [emphasis added]

Licensee commitments are often made in response to bulletins or generic letters. To incorporate one of the recommendations made by the Davis-Besse LLTF, Office Instruction LIC-503 was revised to require the assessment of the need for short-term and long-term follow-on verification of licensee actions taken to address significant generic communications (i.e., bulletins and generic letters). As discussed in Section 4, "Basic Requirements," of LIC-503:

For short term verification, a temporary instruction (TI) is generally used to verify licensee responses to the generic communication (See Section 4.10 of this office instruction for guidance on the preparation of a TI). An assessment of the need for a TI, and its scope, to aid NRR staff in closing out the generic communication is needed.

Long term verification of the implementation could be accomplished through the NRR Project Manager (PM) audits conducted in accordance with guidance associated with NRR Office Instruction LIC-105, "Managing Regulatory Commitments Made by Licensees to the NRC." In accordance with LIC-105, every three years, PMs are required to audit the licensee's commitment management program by assessing the adequacy of the licensee's implementation of a sample of commitments made to the NRC. Section 4.3.1 of LIC-105 explains how the sample of commitments should be chosen. There is no guarantee that a specific generic communication will be reviewed by the PM. In addition, Inspection Procedure 71152, "Identification and Resolution of Problems," requires inspectors to examine a sample of licensee corrective action issues to provide an indication of overall problem identification and resolution performance. Issues identified by generic communications are now required to be included in this sample.

As noted in LIC-503, although the Davis-Besse LLTF recommendation regarding short-term and long-term verification of licensee actions specifically addresses bulletins and generic letters, there also may be a need for follow-on verification of licensee action taken in response to a RIS.

As discussed above in Section 3.0, the NRC staff concluded in SECY-98-224 that escalating a licensee commitment into a legally binding regulatory requirement should be reserved for matters that warrant: (1) inclusion in the technical specifications based on the criteria in 10 CFR 50.36; or (2) inclusion in the license based on determination by the NRC staff that the issue is of high safety or regulatory significance. In some cases, licensee commitments in response to a generic letter or bulletin could warrant such treatment (e.g., issuance of a confirmatory order as discussed above in Section 4.3).

Based on the above, the DORL staff concludes that the current regulatory process associated with review of licensee responses to generic communications, in conjunction with other regulatory processes for escalating commitments into legally binding requirements (e.g., orders), provide an appropriate regulatory framework for utilization of licensee commitments. As such, no changes are deemed necessary regarding use of licensee regulatory commitments with respect to generic communications.

## **5.0 CONCLUSIONS**

Based on the assessment discussed above in Sections 4.1 through 4.10, the DORL staff concludes that the current use of licensee commitments, as described in the associated NRR Office Instructions, is appropriate. Consistent with the guidance in SECY-98-224, and the definition of "obligation" in NRR Office Instruction LIC-100, escalating a licensee commitment into a legally binding regulatory requirement should be reserved for matters that warrant: (1) inclusion in the technical specifications based on the criteria in 10 CFR 50.36; or (2) inclusion in the license based on determination by the NRC staff that the issue is of high safety or regulatory significance. No changes to the current guidance or usage of licensee commitments are recommended.