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December 20, 1995

SECY-95-300

FOR: The Commissioners

FROM: James M. Taylor /s/
Executive Director for Operations

SUBJECT: NUCLEAR ENERGY INSTITUTE'S GUIDANCE DOCUMENT, "GUIDELINE FOR MANAGING NRC COMMITMENTS"

PURPOSE:

To inform the Commission of the staff's activities with regard to docketed commitments made by licensees and acceptable methods for changing these commitments.

To inform the Commission that the staff intends to notify the Nuclear Energy Institute (NEI) by letter that its guidance document "Guideline for Managing NRC Commitments" is an acceptable guide for licensees to follow for managing and changing their commitments to the NRC.

SUMMARY:

In this paper, the staff describes its activities to implement a recommendation that was made by the Regulatory Review Group (RRG), a group of senior NRC staff, in SECY-94-003, "Plan for Implementing Regulatory Review

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Group Recommendations." In SECY-94-003, the staff informed the Commission that to implement the RRG recommendation it would either endorse the industry guideline or develop and promulgate staff guidance on what constitutes a commitment and acceptable methods for changing commitments. In this paper, the staff discusses its interaction with NEI regarding the development of the NEI guidance document, which defines the term "commitment" and creates a process for changing commitments, and the staff's evaluation of the adequacy of the guidance document through implementation of the guidance in a pilot program. On the basis of its review, the staff intends to notify NEI by letter that its guidance document "Guideline for Managing NRC Commitments" is an acceptable guide for licensees to follow for managing and changing commitments to the NRC. In accordance with the RRG recommendations, the need for NRC rulemaking to define a commitment change process will be evaluated after experience

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has been gained using the NEI guidance.

BACKGROUND:

In the original Statements of Consideration for 10 CFR Part 54, "Requirements for Renewal of Operating Licenses for Nuclear Power Plants," Federal Register Vol. 56, No. 240, Pg. 64943, dated December 13, 1991, 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 any particular plant's licensing basis are subject to the Commission's formal regulatory controls. This process ensures that a documented basis for licensee-initiated changes in the licensing basis exists and that Commission review and approval is 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). 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,'" which is discussed below.

On January 4, 1993, the EDO established the RRG to identify those areas in which increased flexibility in the regulatory process could be made available to licensees without adversely affecting the level of safety at operating plants. In SECY-94-003, "Plan for Implementing Regulatory Review Group Recommendations," the staff informed the Commission of its plan to implement recommendations made by the RRG. One of the areas identified in SECY-94-003 that would substantially reduce unnecessary regulatory burden was the

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development of guidance for use by licensees to control docketed commitments that are not contained in the FSAR. Two options were presented to the Commission in SECY-94-003 to complete this RRG item: (1) to develop and promulgate staff guidance on what constitutes a "commitment" and the types of controls to be placed on changing commitments or (2) to endorse a guideline developed by the industry. As described below, NEI volunteered to develop a guideline 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. With respect to 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. This type of action

resulted in an inefficient expenditure of both licensee and NRC resources. Therefore, in SECY-94-066, the staff referred to 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.

DISCUSSION:

Regulatory Significance of Commitments

Regulatory commitments are specific actions that have been voluntarily agreed to or that have been offered by a licensee in docketed correspondence to the Commission on a voluntary basis. Unlike regulatory requirements contained in regulations, licenses, and orders, regulatory commitments are not legally binding. However, the regulatory process relies on commitments in many instances to resolve safety-significant issues and the NRC expects licensees to honor in good faith those commitments that have a safety or regulatory purpose. Many regulatory commitments are not contained in the FSAR but in other docketed correspondence such as licensee event reports (LERs), responses to notices of violation (NOVs), and responses to generic letters. Those commitments not contained in the FSAR are not controlled by a defined regulatory process such as 10 CFR 50.59. Therefore, licensees have the ability to change docketed commitments not contained in the FSAR without informing the Commission. 1_/ The NRC staff has the ability to issue an

1_/ Licensees are required pursuant to 10 CFR 50.9 to notify the Commission of information identified by the licensee having, for the regulated activity, a significant implication for public health and safety. This regulation could be read as requiring licensees to provide after the fact notification to the NRC of changes to commitments that the licensee evaluates as significant to safety. The NEI guideline appears to comport with this requirement in that the guidance recommends NRC notification whenever a licensee identifies a change that is significant to safety.

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enforcement order if it learns of the change and determines that the licensee's failure to implement a commitment has the potential to adversely affect reactor safety. The staff also uses the administrative enforcement tool of notices of deviation if a commitment is not followed. However, consistent with the Atomic Energy Act, a commitment is not an appropriate means to resolve an issue that has a high safety or regulatory significance such that adequate protection of the public health and safety is in question. Such significant matters are to be included either as conditions of the license or as a part of the plant's technical specifications so that they cannot be changed without the prior approval of the staff.

Reduction of Unnecessary Regulatory Burden Through the Development of a Structured Commitment Change Process

Although licensees have the ability to change regulatory commitments not contained in the FSAR without informing the Commission, based on an audit of seven licensees' programs conducted by the staff and documented in SECY-94-066, the staff found no indication that this activity had occurred. Typically, licensees are reluctant to modify or delete a regulatory commitment without first consulting the regional or headquarters' staff. Further, licensees occasionally choose to retain

regulatory commitments that have been shown to be inefficient or ineffective rather than expend the resources necessary to revisit the issue with the NRC staff. 2_/ As recognized by the RRG in SECY-94-003 and again by the staff in SECY-94-066, the lack of a defined commitment change process has resulted in an unnecessary regulatory burden on the licensees. Staff resources have also been affected because licensees tend to discuss all changes to regulatory commitments with the staff, even those changes of negligible regulatory significance.

The guidance developed by NEI on managing commitments provides a structured process, acceptable to the staff, that licensees can use on a voluntary basis. This 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 will reduce unnecessary interactions between the licensee and the staff and provide licensees a level of confidence and the flexibility to modify or delete commitments that have been shown to be inefficient or ineffective without unnecessary staff involvement.

Although the use of the NEI guideline by licensees is not mandatory, indications are that many licensees intend to incorporate the NEI guideline in their procedures when NRC formally indicates its acceptance of the process. Therefore, the NEI guideline should be effective in achieving the RRG goal of

2_/ The Staff's acceptance of the NEI guideline should clarify that licensees have the ability and authority to modify those commitments not contained in the FSAR without first consulting with the staff.

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reducing unnecessary regulatory burden on licensees. However, it should be emphasized that there is no requirement for licensees to adopt this approach. If adopted, the failure of any licensee to properly implement the approach is not subject to enforcement action. However, an administrative action, such as a notice of deviation, may be warranted. Although licensees implementing the NEI guideline will have less frequent contact with the NRC regarding modification or deletion of commitments, the staff has not diminished its reliance on commitments or their importance in the regulatory process. Consequently, the staff expects that licensees will continue to appropriately control commitments.

Development of the Nuclear Energy Institute Guidance Document

During the staff's interaction with industry to set the priorities for implementing the RRG recommendations, the Nuclear Management and Resources Council (NUMARC), now known as NEI, volunteered to develop an industry guidance document on managing licensee commitments to the NRC. From March through August 1994, the staff held a series of five public meetings with NEI to obtain information and hear industry views regarding the development of the industry guidance document that would define the term "commitment" and create a process for changing commitments. As part of the opening dialogue, both NRC and NEI representatives agreed that unnecessary regulatory burden could be reduced by providing guidance to the industry and the NRC staff on the issue of commitment management. NEI estimated that licensees currently track and maintain records of between 5,000 to 10,000 commitments to the NRC for each plant. Both the NRC and NEI agreed that a significant number of these commitments were made in excess of regulatory requirements and could be relaxed without affecting plant safety.

During the course of the public meetings, NEI developed the attached draft guidance document (Attachment 1). This guidance document provides the following definitions to help licensees understand the regulatory significance of and distinction between an obligation and a regulatory commitment:

Obligation means any condition or action that is a legally binding requirement imposed on licensees through applicable rules, regulations, orders, and licenses (including technical specifications and license conditions).

Regulatory Commitment means an explicit statement to take a specific action agreed to or volunteered by a licensee that has been submitted on the docket to the Commission in writing.

The NEI guidance document explains that licensees frequently communicate their intent to take certain actions (regulatory commitments) to restore compliance with obligations, to define a certain method for meeting obligations, to correct or preclude the recurrence of adverse conditions, or to make improvements to the plant or plant processes.

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The NEI guideline provides a process flowchart for licensees to follow when considering a change to a commitment. The NEI decision criteria includes five steps that categorize commitments according to progressively decreasing regulatory and safety significance. The first step captures commitments that are already subject to codified processes, such as 10 CFR 50.59 or 10 CFR 50.54 (a), (p), and (q). The second step asks the licensee to evaluate the safety significance of the change to the commitment to verify that the change would not negatively impact the ability of a structure, system or component (SSC) to perform its intended safety function. An assessment of the commitment is made using the criteria in 10 CFR 50.92, if the evaluation determines that the commitment change could impact the ability of an SSC to perform its safety function. Changes to commitments that upon evaluation would result in a significant hazard condition, as defined in 10 CFR 50.92, would not be implemented without prior discussion with NRC and review and approval, as appropriate. The third step applies to commitments that were made to achieve and maintain compliance with NRC requirements. If the changed commitment does not preserve compliance, the licensee would have the option of not proceeding with the change, or formally requesting regulatory relief (e.g., license amendment, exemption). The fourth step involves commitments (exclusive of those made in confirmatory action letters) in which the NRC either reviewed and approved the action volunteered or agreed to by the licensee or relied upon the commitment in lieu of taking other action, such as issuing an order. Commitments included in this step are specific statements in NRC safety evaluation reports; commitments made in response to bulletins, generic letters, and 10 CFR 50.54(f) letters; and commitments identified as long-term corrective actions in response to an NOV. If the original commitments have not yet been implemented, the licensee can proceed with the change. However, the NRC would be notified as soon as practicable after the change is approved by licensee management, but before any committed completion date. The NEI process does not apply to commitments made in confirmatory action letters as these commitments generally have a high regulatory significance. Confirmatory action letters, pursuant to Section 182 of the Atomic Energy Act, normally specify that licensees must notify the NRC if they do not meet a commitment contained in a confirmatory action letter (see SECY 92-347, October 14, 1992). The last step in the NEI guidance involves commitments made to minimize recurrence of adverse conditions, such as those described in some LERs.

Each step of the process gives licensees guidance on changing the applicable commitment and on recommended interaction with the NRC. Depending on the safety or regulatory significance, commitments that satisfy one of the five NEI decision steps either need prior NRC approval for the change or may be changed without prior interaction with the staff. Commitments that satisfy none of the five decision criteria are considered by the staff to have negligible regulatory or safety significance. In addition, for commitments that satisfy one of the five NEI decision criteria not involving a codified regulatory process, the NEI guidance specifies periodic staff notification, either annually or along with the FSAR updates as required by 10 CFR 50.71(e).

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The NEI guideline further specifies that commitments dispositioned through the NEI process that satisfy none of the NEI decision criteria do not need to be included in the licensee's periodic report because their regulatory and safety significance is negligible. However, the guideline specifies that these commitments and the justification for their modification or deletion be retained as a plant record for the life of the facility.

Conduct of the Pilot Program

In August 1994, NEI completed its initial draft of the guidance document and, at the request of the staff, agreed to initiate a pilot program to test the implementation of the guidance at licensee facilities. On August 25, 1994, the NRC staff held a public meeting with NEI members and representatives of the six licensees who volunteered to participate in the pilot program and described NRC's expectations for the pilot program. Specifically, the staff indicated that it planned to visit each plant participating in the program to review implementation of the guidance document and to determine those areas that required additional clarification or improvement, those areas that required interpretation by the licensee, or those areas not adequately discussed in the guidance. The staff also stressed the importance of the licensees' use of the draft NEI guidance document on commitments from a variety of sources to test the validity of the entire process flowchart. The staff requested that licensees participating in the pilot program include commitments made in response to NRC generic letters, bulletins, enforcement actions, LERS, and other sources.

From February through April 1995, the staff reviewed the pilot program at four of the six pilot plants, one in each region. The staff did not conduct audits at all six pilot plants because the audits conducted at the four sites produced similar results and identified relatively few areas in which the guidance document needed to be improved. The onsite, 3-day reviews were conducted by audit teams consisting of representatives from the appropriate region and members of the Office of Nuclear Reactor Regulation. In addition, members of the Office of Enforcement participated in two of the audits. The audit teams reviewed the licensees' administrative controls implementing the NEI guidance document and reviewed between 50 and 100 commitments processed by each licensee using the NEI guidance.

The audit teams substantially agreed with the licensees' assessment of commitments based on the NEI guidance. However, the audit teams and the participating licensees identified several areas in the NEI guidance document that could be clarified or otherwise improved. The staff discussed these areas for improvement with the licensees during the audit team exit meetings at each site and subsequently discussed these areas

with NEI. All the licensees involved were positive about the value of the NEI guidance document and indicated that it offered a logical, coherent method for evaluating commitments for possible modification or elimination. The licensees also indicated that evaluating and changing commitments were resource-intensive activities. The licensees believed that the vast majority of commitments made to the NRC in the past were improvements in the way they conducted business

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and they had no intention of changing these commitments. Three of the four licensees indicated that they did not plan to review all their commitments to the NRC against the NEI guidance. Rather, these licensees indicated that they intended to incorporate the NEI guidance in their procedures and use the NEI guidance for changing commitments that pose an unnecessary regulatory burden, commitments that are no longer applicable because of facility modifications, or commitments that are not effective. One licensee indicated that it would review all its active commitments to the NRC against the NEI guidance.

On June 7, 1995, the NRC staff met publicly with representatives from NEI to discuss the staff's oversight evaluation of the industry's pilot program to implement the NEI draft guidance document. The staff provided comments to NEI on the guidance document, specifically on the processing of commitments by licensees in response to NRC NOVs and commitments made in response to NRC demands for information under 10 CFR 2.204. NEI agreed to incorporate the staff's comments into its guidance document.

Considerations With Respect to the License Renewal Process

In the original Statements of Consideration for 10 CFR Part 54, "Requirements for Renewal of Operating Licenses for Nuclear Power Plants," Federal Register Vol. 56, No. 240, Pg. 64943, dated December 13, 1991, the Commission stated that a formal license renewal review against current safety requirements would not add significantly to safety because regulatory controls ensure that a documented basis for licensee-initiated changes in the licensing basis exists and that review and approval by the Commission is obtained before implementation if changes to the licensing basis raise an unreviewed safety question or involve changes to the technical specifications. However, in the discussion of the existing regulatory controls with respect to licensee-initiated changes to the licensing basis, the Statements of Consideration emphasized the formal regulatory controls applying to licensee-initiated changes to commitments contained in the FSAR. The Statements of Consideration did not address the existing informal process, described earlier, that has been relied on by the staff to control licensee-initiated changes to that part of the licensing basis residing on the docket but not contained in the FSAR.

One of the provisions of the NEI guideline is that the licensee may change commitments that do not satisfy any of the five decision criteria without reporting the change in its periodic report to the NRC staff. The staff considered this provision in the context of license renewal because it relates to one of the principal bases for the staff's conclusion that a formal license renewal review against the full range of current safety requirements would not add significantly to safety. A basis for this conclusion, discussed in the Statements of Consideration, is that regulatory controls ensure that a documented basis exists for licensee-initiated changes to the plant's licensing basis. It is the staff's view that although commitments that do not satisfy any of the five NEI decision criteria are part of the licensing basis for the facility, they are of negligible regulatory significance. Nonetheless, a situation is created whereby a docket may continue to contain commitments

that have been changed or are no longer being implemented by the

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licensee. As previously stated, this status is permissible under the current regulatory process, which provides no formal control for commitments not contained in the FSAR. Currently, these commitments can be changed by licensees without informing the NRC or documenting the basis for the change, although in practice, experience has shown that licensees typically contact the staff before changing commitments.

The NEI guideline will enhance and provide structure to the current regulatory process, to the extent that it is voluntarily implemented by licensees, by specifying that licensees keep a permanent record of changes to commitments and the justification for these changes. The disposition of these commitments will be available for the staff's review during the life of the facility and will be reviewed periodically, on a sampling basis, during the inspection process. Therefore, consistent with the Statements of Consideration, a documented basis for these licensee-initiated changes to the licensing basis will exist, but not on the docket. In the staff's view, this practice is not new. The Statements of Consideration for the license renewal rule overstated the formality of control over licensee-initiated changes to commitments. In fact, as previously stated, docketed commitments not contained in the FSAR can be changed by licensees without informing NRC or documenting the basis for the change. The NEI guideline greatly improves this situation. Therefore, the NEI guideline is consistent with the essential premise of the license renewal rule and provides greater assurance that a documented basis for changes to commitments will exist for those licensees who adopt and implement the NEI guideline. Requiring licensees to report changes to these commitments that have negligible regulatory significance would add regulatory burden without providing a commensurate increase in safety.

Considerations with Respect to Staff Activities Related to 10 CFR 50.59

The staff has committed to the Commission that within 120 days an action plan will be finalized regarding the implementation of 10 CFR 50.59. One of the long-term tasks in this plan will be to consider the need for additional regulatory guidance or clarification regarding the scope of applicability of 10 CFR 50.59 and the threshold for determining whether a proposed change, test, or experiment will result in an unreviewed safety question (USQ). The staff has also committed to the Commission that before any 10 CFR 50.59 guidance is finalized it will be issued to the public for comment. The staff anticipates that the action plan will be completed over the next 18 to 36 months and may result in changes in the staff's implementation of 10 CFR 50.59. The NEI commitment management guideline incorporates, builds upon and is consistent with the existing 10 CFR 50.59 process. Therefore, any changes to the 10 CFR 50.59 process that result from the staff's completion of the action plan may effect licensee's future use of the NEI guideline. However, in the opinion of the staff, the use of the NEI guideline will strengthen the existing regulatory process by providing a structured process in an area that previously lacked formality and consistency. The use of the NEI guideline may need to be reevaluated depending on the outcome of the 10 CFR 50.59 action plan.

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Future Staff Activities in Managing Commitments

The staff intends to notify NEI by letter (Attachment 2) that NEI's

guidance document (Attachment 1) is an acceptable guide for licensees to follow for managing and changing their commitments to the NRC. The staff plans to conduct training sessions on managing commitments at resident inspector counterpart meetings in each region and for project managers, inspectors, and other appropriate technical personnel based at Headquarters. This training will include a discussion of the regulatory significance of commitments and obligations and the use of commitments and obligations in the regulatory process. After the staff and licensees have gained experience using the NEI guideline, the staff will assess the need to hold workshops on the guidance.

The staff concluded (in SECY-94-066) on the basis of audits of seven licensees, that licensees had implemented processes and procedures that were effective in controlling commitments made to the NRC. The staff will monitor the licensees' implementation of the NEI guideline or their alternative commitment control processes through periodic inspections to verify on an ongoing basis that commitments are being appropriately controlled. However, if the inspection process shows that a significant number of licensees do not implement the NEI guidance in full, or have not adopted some equivalent level of control and documentation of changes to their commitments, the staff will reassess the need to promulgate staff guidance or initiate rulemaking, as stated in SECY-94-003. This reassessment will be initiated after the commitment control process has been inspected at all facilities. It is anticipated that the first round of inspection of all facilities will be completed in approximately 2 years. The staff is modifying its current inspection procedures to include examination, on a sampling basis, of commitments modified or deleted by licensees. The staff will also modify the enforcement manual to clarify the use of notices of deviation in consideration of the NEI guidelines.

COORDINATION:

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

James M. Taylor
Executive Director
for Operations

Attachments: 1. NEI document "Guideline for
Managing NRC Commitments
2. Letter to NEI re "Guideline
for Managing NRC Commitments"

Mr. Joe F. Colvin
Executive Vice President,
Nuclear Energy Institute
1776 I Street, Suite 400
Washington, D.C. 20006-3708

Dear Mr. Colvin:

SUBJECT: NEI'S "GUIDELINE FOR MANAGING NRC COMMITMENTS," Revision 2,
September 20, 1995

The staff of the U.S. Nuclear Regulatory Commission (NRC) has completed its review of the subject NEI guidance document and its evaluation of the industry pilot program implementing the NEI guidance document. As you are aware, the issue of defining the term "commitment" and providing licensees with a change process for commitments was identified by the

NRC's Regulatory Review Group as an area in which the regulatory process could be made more flexible without adversely affecting public health or safety. On the basis of its review, the staff has determined that NEI's "Guideline for Managing NRC Commitments" is an acceptable method for licensees to follow for managing and changing their NRC commitments. We believe that the NEI guideline provides a logical method for evaluating commitments for possible modification or elimination and can reduce unnecessary regulatory burden by providing the industry the necessary flexibility to manage commitments with only limited NRC involvement. The NEI guideline references NSAC-125 as a method that licensees may use in implementing 10 CFR 50.59. Licensees should bear in mind that NSAC-125 has not been endorsed by the NRC, and therefore any use of those guidelines is advisory only and that nothing in NSAC-125 can be construed as a modification of 10 CFR 50.59. Further, the NEI guideline specifies that changes to those commitments not satisfying any of the five decision criteria need not be included in the periodic report to the Commission. Although these commitments have negligible regulatory significance, they are nonetheless a part of the plant's licensing basis. In view of license renewal considerations with regard to maintaining adequate control of a plant's licensing basis, I emphasize the need for the licensee to maintain the documentation for changes to these commitments for the life of the plant, as stated in the NEI guideline.

To aid in the implementation of NEI's "Guideline for Managing NRC Commitments," the staff plans to hold training sessions for NRC inspectors, project managers, and other appropriate personnel. The staff will monitor the licensees' implementation of the NEI guideline or their alternative commitment control processes through periodic inspections. On the basis of the results of these inspections, the staff will reassess the need to promulgate staff guidance or initiate rulemaking. After experience has been gained using the NEI guideline, the staff will assess the need to hold workshops on the guidance.

Attachment 2

J. Colvin

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We are especially pleased with NEI's leadership role in developing and promulgating the "Guideline for Managing NRC Commitments." The cooperative and professional manner in which NEI personnel and the NRC staff interacted resulted in a product that provides important guidance to licensees that will save both licensee and staff resources. If you need further information, please contact Gene Imbro of my staff at 301-415-2969.

Sincerely,

Roy P. Zimmerman
Associate Director for Projects
Office of Nuclear Reactor Regulation

*** END OF DOCUMENT ***

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