

March 4, 2013

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

FROM: Eric J. Leeds, Director */RA/ (Jennifer Uhle for)*
Office of Nuclear Reactor Regulation

SUBJECT: STATUS OF RECOMMENDATIONS: AUDIT OF THE NRC'S
MANAGEMENT OF LICENSEE COMMITMENTS (OIG-11-A-17)

This memorandum responds to the document dated December 11, 2012,¹ transmitting the Office of the Inspector General's (OIG's) analysis and status of the recommendations, as discussed in the U.S. Nuclear Regulatory Commission's (NRC's) letter dated November 1, 2012.² The OIG audit report dated September 19, 2011,³ identified the recommendations regarding the NRC's management of licensee commitments. The audit identified the following recommendations:

- (1) Revise the section of LIC-105,⁴ "Managing Regulatory Commitments Made by Licensees to the NRC," on conducting triennial commitment management audits to include detailed sampling direction, such as a checklist of sources to be used in identifying a universe of commitments from which to sample.
- (2) Revise LIC-105, "Managing Regulatory Commitments Made by Licensees to the NRC," to include well-defined expectations and guidelines regarding the conduct of commitment management audits. The guidelines should include an expectation that audited commitments are reviewed to ensure that they have been appropriately implemented in the plant facility, procedures, program, or other plant documentation.
- (3) Develop training that sufficiently addresses the definition and use of commitments and provide it to all agency staff involved in reviewing reactor licensee commitments.

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¹ Agencywide Documents Access and Management System (ADAMS) Accession No. ML12346A398.

² ADAMS Accession No. ML12291A795.

³ ADAMS Accession No. ML112620529.

⁴ ADAMS Accession No. ML12251A203.

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

The OIG status and review memorandum dated December 11, 2012, supplied an analysis of the NRC's response to each of the recommendations above, as described in the agency's memorandum dated November 1, 2012. The OIG memorandum stated that Recommendations 1, 2, and 4 were changed from resolved to closed status and that Recommendations 3 and 5 remained in resolved status.

The OIG memorandum dated December 11, 2012, also requested that the NRC staff provide an updated status for each of the recommendations. An updated status is provided below for each of the OIG commitment management audit report recommendations.

Recommendation 1:

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

Updated Status

The NRC staff responded to Recommendation 1 with the following corrective actions:

December 16, 2011: Issue audit sample guidelines memorandum to Division of Operating Reactor Licensing (DORL) PMs and branch chiefs (BCs).

September 14, 2012: Revise LIC-105 to add guidance list as an enclosure.

The OIG analysis of the NRC staff's proposed corrective actions determined that Recommendation 1 is closed.

The NRC staff's updated status letter dated November 1, 2012, discussed the memorandum issued to DORL PMs on December 15, 2011,⁵ which included guidance on regulatory commitment management audit sample selection. Subsequently, on March 29, 2012,⁶ a revised memorandum was issued to DORL PMs to incorporate changes in the guidance to address OIG

⁵ ADAMS Accession No. ML113400148.

⁶ ADAMS Accession No. ML120720345.

concerns, as described in the NRC staff's updated status letter dated March 1, 2012.⁷ Specifically, guidance was added that instructs PMs to review the sample sources with a particular intent to identify commitment descriptions that may indicate issues that are safety significance or a regulatory requirement.

The NRC approved Revision 4 of NRR Office Instruction LIC-105 on September 10, 2012.⁸ Sample selection guidance was added to Section 4.3.1 of LIC-105, Revision 4, and Enclosure 2, "Triennial Commitment Audit Sample Selection Guidance," was also added. The revised guidance includes a list of the NRC sources to be used in determining audit samples, as well as a list of sources to be requested from the licensee. The document also includes an example e-mail to demonstrate how to request documents and commitment lists from the licensee in order to promote uniformity and thoroughness in the audit samples that the DORL PMs develop in support of the audit. These revisions to LIC-105 complete NRR's implementation of Recommendation 1.

Recommendation 2:

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

Updated Status

The NRC staff responded to Recommendation 2 with the following corrective actions:

December 16, 2011: Issue expectations and guidelines memorandum to DORL PMs and BCs.

September 14, 2012: Revise LIC-105 to add management expectations and guidance.

The OIG analysis of the NRC staff's proposed corrective actions determined that Recommendation 2 is closed.

The NRC staff's updated status letter dated November 1, 2012, discussed the memorandum issued to DORL PMs on December 15, 2011,⁹ which included guidance and expectations on the verification of licensee implementation of regulatory commitments. Subsequently, on March 29, 2012, the NRC issued a revised memorandum to DORL PMs to incorporate changes in the guidance to address OIG concerns, as described in the NRC staff updated status letter dated March 1, 2012. However, it was not necessary to change guidance on the verification of licensee implementation of regulatory commitments.

⁷ ADAMS Accession No. ML120260304.

⁸ ADAMS Accession No. ML12251A203.

⁹ Ibid No. 5.

Revision 4 of NRR Office Instruction LIC-105 was approved on September 10, 2012. Section 4.3.1 of LIC-105, Revision 4, provides a list of documents to be reviewed to assess the licensee's implementation of a regulatory commitment. Specific direction is included to review the implementation documentation and confirm that all appropriate plant documentation has been revised and that the changes accurately and fully implement the commitment. Additional guidance is provided on fleet and site-specific programs and procedures and physical plant verifications. These revisions to LIC-105 complete NRR's implementation of Recommendation 2.

Recommendation 3:

Develop training that sufficiently addresses the definition and use of commitments and provide it to all agency staff involved in reviewing reactor licensee commitments.

Updated Status

The NRC staff responded to Recommendation 3 with the following corrective actions:

September 28, 2012: Complete interim training for key staff involved in the commitment management processes.

September 30, 2013: Implement training module on the use of licensee commitments.

The OIG analysis of the NRC staff's proposed corrective actions determined that Recommendation 3 remains resolved.

The NRC staff's updated status letter dated November 1, 2012, discussed the training that Regional staff received on March 1, 2012 and June 6, 2012. The DORL staff received training on July 17, 2012, and the Division of Engineering technical staff received training on September 4, 2012. The Office of the General Counsel (OGC) staff requested the regulatory commitment training presentation materials, since it plans to consider this information in developing OGC-specific training. The Division of License Renewal (DLR) is also providing DLR-specific regulatory commitment training to its staff based on discussions and collaborations with DORL staff. The NRR executive management team received a comprehensive briefing on regulatory commitments on September 27, 2012.

Finally, Section 4.1 of Revision 4 of LIC-105, approved on September 10, 2012, includes instructions on the definition and appropriate use of regulatory commitments. LIC-105 was distributed to all NRR staff through a Program Management, Policy Development and Analysis Information Notice on September 14, 2012. Therefore, NRR considers the corrective action scheduled for completion by September 28, 2012, associated with Recommendation 3, to be complete.

In addition, NRR submitted Human Resources Training and Development Resources Use Request No. 12R006 on April 2, 2012, requesting the development of a formal, agencywide training module regarding regulatory commitments. The disposition of the request was completed on July 25, 2012, and the first project meeting to develop the training module was

held on October 4, 2012. Meetings and collaborations between NRC staff and vendor staff are ongoing to develop and produce the regulatory commitment computer-based training module. This corrective action is on track for completion by September 30, 2013.

Recommendation 4:

Identify actions to determine the extent to which commitments that are considered safety significant and/or necessary for approval of proposed licensing actions exist. This could be accomplished by either: (1) NRR project managers identifying any such commitments as part of the triennial commitment management audits, or (2) conducting a review of all existing commitments and identifying any inappropriately applied commitments. Any such commitments should be identified to NRC management for appropriate action.

Updated Status

The NRC staff responded to Recommendation 4 with the following corrective actions:

November 30, 2011: Issue a commitment identification memorandum to DORL PMs and BCs, which includes the expectation that inappropriately applied commitments, which have been misused for issues that are safety significant or may have formed the basis of the NRC staff's reasonable assurance finding on a licensing action, will be identified as part of the triennial commitment management audits.

September 14, 2012: Revise LIC-105 to direct PMs to include the expectation that inappropriately applied commitments, which have been misused for issues that are safety significant or may have formed the basis of the NRC staff's reasonable assurance finding on a licensing action, will be identified as part of the triennial commitment management audits.

The OIG analysis of the NRC staff's proposed corrective actions determined that Recommendation 4 is closed.

The NRC staff's updated status letter dated November 1, 2012, discussed the memorandum issued to DORL PMs on November 29, 2011.¹⁰ The memorandum included guidance to the PMs in distinguishing legal obligations from regulatory commitments, in order to identify misapplied commitments when performing triennial commitment audits. The expectation is not that PMs will evaluate all licensee commitments for misapplied commitments during the audit. Rather, the PMs will consider the possibility of misapplied commitments as they develop and evaluate audit samples. The PMs are to notify DORL management of any such commitments that are identified during the audit for resolution and tracking purposes.

The NRC approved Revision 4 of NRR Office Instruction LIC-105 on September 10, 2012. Section 4.3 of LIC-105, describes and defines misapplied commitments and provides specific guidance to DORL PMs on identifying and addressing misapplied commitments. The newly

¹⁰ ADAMS Accession No. ML113190085.

added Enclosure 2 regarding sample selection also provides guidance to focus the commitment audit on identifying misapplied commitments.

Specifically, in addition to the 10 or more commitments selected for the audit sample, Section 4.3 requires DORL PMs to identify all license amendment safety evaluations (SEs), exemptions and relief request SEs issued to a facility during the previous 3 years. PMs are directed to review all commitments in these documents and to identify and evaluate each commitment to determine if it has been misapplied, according to the criteria in Section 4.2 of LIC-105.

Enclosure 2 also directs DORL PMs to review the licensee's complete list of all open regulatory commitments, noting commitment descriptions that appear to be associated with license amendment requests, exemptions and relief requests, as these documents involve regulatory decisions that were made by the NRC staff. PMs will consider the item descriptions on this list that may indicate issues that are of safety significance or a regulatory requirement for inclusion in the audit sample. This effort will apply a first-level screening for potentially misapplied commitments to the full scope of all open commitments that the licensee tracks. These revisions to LIC-105 complete NRR's implementation of Recommendation 4.

Recommendation 5:

Depending on the outcome of the efforts to meet Recommendation 4, develop and utilize a tool for systematically tracking the status of commitments that are deemed safety significant and/or necessary for approval of proposed licensing actions.

Updated Status

The NRC staff responded to Recommendation 5 with the following corrective action:

January 31, 2013: Issue an action review memorandum to the DORL Division Director that compiles the results of the actions from Recommendation 4 for a period of 9 months after the commitment identification memorandum is issued. Include an assessment of the data and recommendations for further actions as needed.

The OIG analysis of the NRC staff's proposed corrective action determined that Recommendation 5 remains resolved.

In accordance with the corrective action associated with Recommendation 5, above, data was gathered and assessed from the 14 triennial commitment management audits issued in the 9-month period (April 2012 – December 2012), following issuance of the DORL guidance memorandum on March 30, 2012. Additional information from three relief requests, which the NRC staff granted, and one regulatory commitment audit report, issued after the 9-month assessment period, also were reviewed. The information was evaluated to determine the extent to which misapplied commitments may exist and was used to recommend future actions based

on the conclusions of the assessment, as discussed below. The assessment and recommendations were provided to the DORL Division Director in a memorandum dated January 31, 2013,¹¹ as required by the corrective action associated with this recommendation.

The regulatory commitment audits issued during the 9-month assessment period did not identify any misapplied commitments. However, the audit report subsequently issued for the Limerick Generating Station (LGS),¹² identified six misapplied commitments. The regulatory commitments were determined to have been misapplied by NRC staff because they were relied on for the finding of public health and safety in the NRC staff SE issued April 8, 2011.¹³ The SE was associated with the LGS, Units 1 and 2 license amendments for measurement uncertainty recapture power uprate and standby liquid control system changes. The audit report determined that, although the regulatory commitments were misapplied, the actions associated with the commitments were appropriately implemented. Therefore, no impact resulted from the misapplied commitments and the NRC staff requires no further action to address the misapplied regulatory commitments. While these results do not confirm that there are no misapplied commitments presently active, they indicate that the process is capable of identifying misapplied commitments, and that the misapplication of commitments is not pervasive.

Additional documents were reviewed, as described below, to complete DORL's assessment of the extent of misapplied commitments. Specifically, the treatment of regulatory commitments associated with several recently-issued relief requests was evaluated.

The assessment and recommendation memorandum dated January 31, 2013, also evaluated three relief requests that the NRC staff issued during the 9-month assessment period. The first two relief requests granted on April 4, 2012,¹⁴ and April 19, 2012,¹⁵ were to Joseph M. Farley Nuclear Plant, Unit 1 (Farley) and Braidwood Station, Units 1 and 2 (Braidwood), respectively. The approval of the relief requests used NRC staff requests for additional information (RAI) to request that the licensees provide regulatory commitments to perform an action (i.e., flaw evaluations), if required during upcoming inspections. The NRC staff considered this information necessary in order to grant the relief requests. The licensees provided the requested regulatory commitment to perform the flaw evaluations, if required. The associated SEs stated that granting the relief was "subject to" the licensee supplying the flaw evaluations, if required, as requested in the RAI and to which the licensee subsequently agreed in the regulatory commitment.

The concern with issuance of the reliefs, described above, is that the process of the NRC requesting, and the licensee providing, a regulatory commitment to complete a future action, as a basis for granting the relief, may be misconstrued as reliance on the commitment for NRC staff approval. However, discussions with the responsible DORL PM, BC and OGC staff affirmed that the inclusion in the SE of the phrase "subject to" with regard to the action, and not the regulatory commitment, legally obligated the licensee to perform the action as a condition of the relief. However, NRC staff interviewed also agreed that characterizing the future action of

¹¹ ADAMS Accession No. ML13014A413.

¹² ADAMS Accession No. ML13037A581.

¹³ ADAMS Accession No. ML110691095.

¹⁴ ADAMS Accession No. ML12094A281.

¹⁵ ADAMS Accession No. ML12108A123.

performing the flaw evaluations, if required, in terms of a regulatory commitment, could cause confusion regarding the fact that the action was elevated to an obligation. Additionally, in both instances described above, the commitments only applied to inspections that have now been completed. Therefore, the regulatory commitments are no longer active.

On July 18, 2012,¹⁶ the NRC staff issued the same relief request to the Beaver Valley Nuclear Station, Unit 2 (Beaver Valley). Similar to the Farley and Braidwood relief requests, the licensee included a regulatory commitment to complete flaw evaluations, if required. However, based on the NRC staff discussions described above, the DORL PM for Beaver Valley included specific and deliberate language in the SE to articulate that the action associated with the licensee's proposed regulatory commitment was elevated to a legal obligation. The SE included the following:

In its letter dated June 1, 2012, the licensee modified the relief request to include a flaw evaluation submittal, if required, for NRC review and approval, prior to the expiration of the relief. In addition to including this as part of the relief request, the licensee categorized the flaw evaluation submittal as a "regulatory commitment." The NRC staff considers the flaw evaluation submittal, and the associated NRC review and approval of the flaw evaluation submittal prior to startup, to be integral to the granting of this relief request. Thus, the licensee's flaw evaluation submittal, should it be required under this relief request, is an obligation that is not changeable under the licensee's commitment management program.

In addition, the Beaver Valley example was provided to, and discussed with, NRC technical staff involved in evaluating and preparing the SE input for the subject relief requests, as well as with the DORL PMs.

The results of the assessment, described above, indicate that the existence of misapplied regulatory commitments, especially active commitments, is not pervasive. These results can be explained by the following observations:

- (1) NRC staff SEs often do not discuss regulatory commitments proposed in the licensee's submittal. Therefore, no documented, legal reliance on the commitment exists.
- (2) Regulatory commitments relied on for approval, of a proposed action, are often relatively short-term, time-limited actions. Therefore, these actions typically have been completed and the associated regulatory commitment has been closed and is no longer an active commitment. The regulatory commitments associated with the LGS license amendments and the Farley and Braidwood relief requests, discussed above, illustrate this observation.
- (3) Finally, while the OIG audit report identified that approximately 20 to 30 percent of the NRC staff interviewed exhibited a lack of understanding about the proper use of regulatory commitments, the vast majority responded with an accurate understanding

¹⁶ ADAMS Accession No. ML12188A110.

of regulatory commitments. Therefore, it is reasonable to expect that, in most instances, knowledgeable NRC staff will ensure that regulatory commitments are used appropriately in the course of the review and approval of a licensee request.

For the reasons discussed above, the NRC staff has concluded that misapplied regulatory commitments do not exist to a great extent, and have occurred on a limited basis. In addition, going forward, the training and knowledge-sharing sessions that have been conducted, as well as the Web-based continuing training course under development, place particular emphasis on clearly articulating, in NRC staff SEs, that a regulatory commitment has been elevated to an obligation.

Revision 4 of LIC-105 provides guidance to the DORL PMs that the scope of the documents to be reviewed during the audit be expanded to include the NRC SEs issued since the previous audit. It also instructs the DORL PMs to screen the licensee's list of open commitments to specifically determine if any regulatory commitments were misapplied. This periodic exercise provides the appropriate tools for DORL PMs to appropriately characterize the elevation of regulatory commitments to obligations in NRC SEs and to identify historical regulatory commitments that have been misapplied.

The Nuclear Energy Institute (NEI) 99-04¹⁷ guidance, which industry developed to manage regulatory commitments, directs NRC staff to be notified of changes to regulatory commitments involving safety significance or NRC reliance. The NRC staff has observed that licensees have largely adopted this guidance and it has been proceduralized in commitment management programs. From a qualitative, risk-informed perspective, these notification of change guidelines provide a defense-in-depth mechanism to alert NRC staff to historical regulatory commitments that may have been misapplied and subsequently modified by licensees.

It is noted that the DORL regulatory commitment audit report reviewed for Grand Gulf Nuclear Station, Unit 1,¹⁸ (Item No. 6 in the table included in the January 31, 2013, DORL assessment and recommendation memorandum) supplied information that illustrates the vast number of regulatory commitments that each licensee initiates and tracks. Section 2.2 of the report notes the following:

Since the system was created, the licensee has entered more than 36,000 licensee-defined commitments. At the time of the audit, the licensee was tracking approximately 5,300 items in the LRS [Licensing Research System] as regulatory commitments of which 77 were designated as "OPEN" actions items. There are also approximately 900 items that are being tracked as "continuing compliance."

This demonstrates the impracticality of NRC staff constructing a database that compiles and evaluates the thousands of regulatory commitments that all of the licensees have made for misapplied commitments. Moreover, the NRC staff believes that this approach is not effective for identifying misapplied commitments promptly, while the 3-year retrospective review in the

¹⁷ NEI 99-04, "Guidelines for Managing NRC Commitment Changes," July 1999 (ADAMS Accession No. ML003680088).

¹⁸ ADAMS Accession No. ML12228A516.

revised audit process accomplishes this in a much more effective and efficient manner. Based on this assessment, the NRC staff does not consider it prudent to pursue developing a regulatory commitment tracking database.

Section 4.3 of Revision 4 to LIC-105, requires DORL PMs to generate an internal branch memorandum, or an e-mail placed in ADAMS, that describes any misapplied commitment identified during the commitment audit and any actions taken to resolve the misapplied commitment. The commitment audit report template, contained in LIC-105, was also revised to include a section that includes the findings of the misapplied commitment review and documentation of any corrective actions taken.

Per the assessment results above, the NRC staff anticipates that, in the majority of cases, resolution of indentified misapplied commitments will not require follow-on actions past issuance of the commitment audit report. However, through discussions between OIG and NRC staff, it is also recognized that some type of systematic tracking is appropriate for any identified misapplied commitments that require follow-on actions after the associated commitment audit report has been issued. Therefore, the NRC staff is recommending the following, additional corrective action to address Recommendation 5:

September 30, 2013: Revise LIC-105 to include the requirement that a docket-specific technical assignment code (TAC) will be opened to track the completion of any follow-on actions to address an identified misapplied commitment after the associated commitment audit report has been issued. The TAC will be categorized under the planned accomplishment code "Other Licensing Tasks," (OLT) and documented in the associated commitment audit report.

OLT TACs are monitored by NRC management for completion according to Congressionally-mandated metrics and are initiated, tracked and documented as complete within the Time, Resource, and Inventory Management (TRIM) System. Therefore, the above corrective action provides an effective management control to systematically track tasks that are required to be completed, after the issuance of the commitment audit report, to address any identified misapplied commitments.

The NRC staff has determined that in lieu of a tracking database to identify misapplied commitments, more effective tools exist through the revisions of LIC-105. These revisions were initially made to determine the extent to which misapplied commitments exist, and are now permanently in place, to provide both a retrospective review of likely candidates for misapplied commitments, and to ensure that current and future approvals do not include misapplied commitments. Further, the staff believes that the criteria provided to licensees in NEI 99-04, provide an additional, effective tool in identifying historically misapplied regulatory commitments.

In addition, based on discussions with OIG staff, the NRC staff is recommending that an additional corrective action be established to implement an effective management control to ensure systematic tracking of any follow-on tasks that are required to address identified misapplied commitments. This corrective action is proposed for completion by September 30, 2013.

cc: Chairman Macfarlane
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
SECY
EDO

In addition, based on discussions with OIG staff, the NRC staff is recommending that an additional corrective action be established to implement an effective management control to ensure systematic tracking of any follow-on tasks that are required to address identified misapplied commitments. This corrective action is proposed for completion by September 30, 2013.

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**ADAMS Accession Nos: pkg: ML13042A105; Incoming: ML12346A398;
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