NRC Questions in Response to NEI 18-07, "Licensee Performance Assessments: Methodology for Licensee Identification of Latent Design Issues"

Acronyms used throughout this document:
LPA: Licensee Performance Assessment
LPAP: Licensee Performance Assessment Plan
FEI: Focused Engineering Inspection

The following questions are posed to better understand how the industry proposal in NEI 18-07 can be interpreted in view of the NRCs Principles of Good Regulation: Independence, Openness, Efficiency, Clarity and Reliability.

1. Regarding the principle of *independence,* the proposal describes that independence is accomplished through challenge boards, team makeup, and NRC observations. NRC observations of LPA team activities, as described in NEI 18-07, do not include any feedback to the LPA team on the independence or experience of the team members, scope or depth of the LPAP, or the adequacy of the LPA outcomes. ***How does NEI 18-07 ensure the NRC maintains sufficient independence in accepting assessment outcomes if the NRC role is limited only to observation?***

2. Regarding the principle of *independence*, NEI 18-07 describes that the LPA Manager is an individual who manages or has authority of the program area being assessed, and that one of the core team members is the subject matter expert and likely the program owner at the site being assessed. ***How does NEI 18-07 assure that an independent assessment has been conducted if the SME is assessing his or her own work, and the LPA team is managed by the licensee official in charge of the program being assessed?***

3. Regarding the principle of *independence*, the NRC will develop criteria by which it can consistently evaluate the quality of an LPA. ***What criteria should be used by NRC in "accepting" the LPA such that a licensee receives credit for the associated FEI?***

4. Regarding the principle of *openness*, and given the level of detail proposed by NEI 18-07 for the final report, ***how will the industry communicate the scope of the LPAP in a way that is visible to the public?*** Also, given that NEI 18-07 considers the NRC Inspection Procedures only as guidance in developing LPAPs, ***how does the proposed process assure that the LPAP is of sufficient depth and rigor to satisfy the intent of the FEI it is intended to replace and how will this be documented in a way visible to the public?***

5. Regarding the principle of *openness*, the proposed guidance in NEI 18-07 discusses that openness is provided by delivering a copy of the report to the NRC and allowing the NRC to observe LPA activities. However, the NRC's principle of openness expects that nuclear regulation be conducted publicly. ***How does the industry propose to make LPA activities publicly accessible to the same extent offered under NRC's Reactor Oversight Process? Will LPA final reports be docketed such that they can be viewed by members of the public?***

6. Regarding the principle of *openness*, NEI 18-07 proposes to maintain a list of documents reviewed, but there is no indication that this list will be included in the final report. This is contrary to the documentation expectation in NRC Inspection Manual Chapter 0611. ***How will the principle of openness be supported without public access to the list of documents reviewed?***

7. Regarding the principle of *openness*, NEI 18-07 discusses that the licensee will conduct a "final briefing to the NRC." ***Please describe the intent of this briefing, including with whom the briefing would occur, and whether or not there may be benefit to conducting some of the initial briefings as public meetings.***

8. Regarding the principle of *openness*, the proposed guidance does not discuss screening the identified issues for safety significance or per the NRC Enforcement Policy. To meet the documentation standard of Manual Chapter 0611, licensee-identified violations must be screened using the guidance in Inspection Manual 0612, including determination of safety significance. The proposed LPA report template includes only a list of issues identified and the condition reports which will be used to track corrective action. ***How does the industry plan to document these screening results of identified issues, such that the NRC and the public can understand whether any of the identified issues may warrant NRC enforcement action?***

9. Several elements of the proposal discuss new duties for the NRC Resident Inspector, including: coordinating schedules for planned LPAs versus engineering inspections; receiving the LPAP for planning NRC engagement; coordinating NRC observations of challenge boards and other LPA activities; and receiving the final approved LPA. Engineering inspection activities are the responsibility of regional inspectors from the Division of Reator Safety's Engineering Branch (DRS/EB). ***Can the industry explain the rationale for choosing the NRC Resident Inspector as the point of engagement for LPA activities, versus the DRS/EB staff who are normally responsible for these inspections?***

10. Regarding the principle of *openness,* NRC inspectors assigned to observe LPA activities should be provided ample time to arrange their schedules such that they can be on site when required. NEI 18-07 does not provide detail on how LPA activities will be coordinated and scheduled to ensure the proper NRC staff will be available to support. ***Can industry explain how the schedules for LPA activities will be communicated such that NRC observers have time to arrange their schedules to support the activities? In addition, has industry considered factors such as the length of the assessment and availability of the LPA Team such that NRC observers can optimize their time onsite?***

11. NEI 18-07 describes that one benefit of LPA activities is knowledge transfer for newly assigned engineers. ***How will the industry ensure that the objective of knowledge transfer is balanced with providing the proper depth of review consistent with an NRC-performed FEI? Does the industry propose to establish minimum technical or experience standards for LPA Team Members?***

12. NEI 18-07 describes that "the timeframe for data relevance is three years." ***Does this infer that only activities conducted within the preceding three years will be reviewed? Will LPA teams be excluded from reviewing documents that are more than three years old to determine the acceptability of current operation? Please clarify the intent and potential application of this standard and whether it would be more appropriate to utilize NRC Inspection Procedures being addressed by the LPAs for guidance on relevant timeframes?***

13. NEI 18-07 describes the Challenge Board as an important activity in reviewing the results of the LPA. The NRC's experience is that the quality of activities such as challenge boards are highly dependent on the experience level of the participants. The proposal contains no discussion about Challenge Board constitution (minimum membership, experience level of participants, independence, etc.), although Attachment 4 infers that a quorum must be met. ***What standards does the industry plan to propose for conduct of the Challenge Board?***

14. NEI 18-07 is silent on potential enforcement actions for performance deficiencies identified during LPAs. ***Is it to be assumed that the NRC would view all performance deficiencies identified during LPAs as licensee-identified? If so, how does the industry propose to update other aspects of the ROP that are informed by documented inspection findings, such as the threshold for cross-cutting themes?***

15. The LPA, as described in NEI 18-07, is used to gain confidence that the implementation of engineering programs at the site does not result in the introduction of latent conditions that could prevent proper operation of SSCs. ***Shouldn't the LPAs also identify any latent conditions, regardless of how they came to be present? For example, shouldn't LPAs also be inclusive enough to identify older design issues or maintenance-induced problems?***

16. NEI 18-07 discusses team selection on the basis of members' knowledge and familiarity with the area being assessed. The document mentions Computer-based training (CBT) as a requirement for the Team Leader, but it does not indicate any formal training requirements for other team members. ***Can industry explain how they will ensure the LPA Team is adequately trained to identify regulatory non-compliances at similar thresholds to those applied by NRC inspectors?***

Additional Considerations:

In support of *Independence*:

- Should LPA Challenge Boards include representative from NRC Regions as observers or non-voting member to witness deliberations and assess the quality of the review?
- Should LPA Team Members and LPA Managers be independent of the work being reviewed if the LPA is to be accepted for FEI credit (this would preclude situations where an LPA team member is reviewing their own work in an LPA)?
- Should local SMEs be provided to the LPA team as an information resource rather than a core member of the LPA team?

- Should standards by which Independent Team Members are selected be established to ensure adequate independence and knowledge of the area being assessed?
- Should the LPAP include the NRC Focused Engineering Inspection Procedure as the minimum required scope, rather than as guidance as stated in NEI 18-07?
- Should NRC prescribe some percentage of the samples in the LPA?
- Should LPAPs be accepted by NRC Regions prior to the LPA to ensure that the inspection objectives are met for the related FEI?

In support of *Openness*:

- Should the LPAP be docketed and should NRC acceptance (if deemed necessary) be docketed to provide visibility to the public?
- Should the LPA report provide, for each identified performance deficiency, the significance determination process screening result and the enforcement policy violation statement, such that the NRC can determine whether or not the issues should be viewed as licensee identified violations or whether NRC enforcement action may be appropriate?

In support of *Efficiency*:

- Should NEI 18-07 explicitly state that in-house LPA team members not have other assigned responsibilities during LPAs?