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December 31, 1999

Mr. David L. Meyer
Chief, Rules and Directives Branch
Division of Administrative Services
Office of Administration
Main Stop: T-6 D59,
U. S. Nuclear Regulatory Commission
Washington, D. C., 20555-0001

SUBJECT: COMANCHE PEAK STEAM ELECTRIC STATION (CPSES)
DOCKET NOS. 50-445 AND 50-446
PUBLIC COMMENTS ON THE PILOT PROGRAM FOR THE NEW REGULATORY OVERSIGHT PROGRAM

REF: Federal Register Notice (64 Fed. Reg. 60244; November 4, 1999).

Dear Mr. Meyer:

TXU Electric endorses the comments submitted by the Nuclear Energy Institute (NEI) on the Regulatory Oversight Program. TXU Electric believes that incorporating these comments would provide substantial improvement to both the process and its implementation. Moreover, TXU Electric wants to emphasize three specific issues:

1) The Performance Indicator (PI) information is considered too important to hasten data collection to meet an apparently arbitrary fourteen (14) day reporting requirement. Rather, consistent with other Nuclear Regulatory Commission (NRC) practices, we suggest that a longer period (e.g., 30 days) would be more prudent and would reduce "time pressure induced" human errors in reporting the PI data.

Add:
A. Madison

2) The final Significance Determination Process (SDP) in the area of Security is not currently available for review. Therefore, it is difficult to provide a quantitative review and subsequent public comment. The Security SDP is noteworthy because it contains undefined terms, is vague, and is too generalized. TXU Electric recommends that the alternative Security SDP provided by NEI at a recent public NRC meeting is clearer, more precise, and will result in less interpretation. In addition, the Emergency Preparedness SDP contains footnotes which document requirements for timely resolution of findings. However, there is no guidance provided for how the timeliness thresholds will be utilized or enforced.

3) The NRC/NEI's Frequently Asked Questions (FAQs) website is, from an implementation perspective, one of the most significant and important aspects of the Oversight process. The FAQs provide a mechanism to advise licensees of NRC clarifications and enhancements to the PI definitions and program implementation. TXU Electric strongly recommends that the FAQ process become a permanent aspect of the program. Related to the concern of interpretation is the use of enforcement during this process. Enforcement is not an appropriate regulatory tool for resolving differing professional opinions on PIs between the NRC and licensees where no clear position exists. Resolution of technical concerns through the FAQ process provides consistency and ensures open public communications.

In addition to the above, the attached document provides specific comments on the Revised Reactor Oversight Process. The attached comments were developed in conjunction with other utilities that were part of a "Shadow Plant Program". The Shadow Plant Program (SPP) was an ad hoc effort by mostly Region IV non-pilot plants to provide the opportunity to prepare for the upcoming changes in NRC Revised Reactor Oversight Process. The members participating in the SPP simulated (i.e., "shadowed") participation in the NRC Pilot Plant Program to: (1) keep current on the important lessons learned from the ongoing NRC Pilot Plant Program; (2) develop the required infrastructure for supporting the program prior to the April 1, 2000 implementation date; and (3) gain experience to enable individual licensees to provide constructive comments on the NRC Revised Reactor Oversight Process. The attached comments therefore represent general consensus positions, and the information contained herein may or may not represent the final position of each individual utility.

It is important to note that all information developed during this program was immediately provided to the Nuclear Energy Institute (NEI), and we believe these comments are fully and completely consistent with those taken by NEI. This letter (without reservation) supports and endorses the NEI comments and positions. Therefore, the information contained herein should be considered as amplifying (from a field implementation perspective) and is supportive of the NEI comments.

TXU Electric appreciates the opportunity to provide comments on the oversight process. If you have any questions concerning this submittal, please contact me at (254)897-8233, or Mr. Tim Hope, at (254)897-6370.

This communication contains no commitments.

Sincerely,

C. L. Terry

By: Roger D. Walker
Roger D. Walker
Regulatory Affairs Manager

RDW/clc

Attachment

cc: J. I. Tapia (NRC Region IV)
D. H. Jaffe (NRR)
E. W. Merschoff (NRC Region IV)
Senior Resident Inspector (NRC) NR-1
Document Control Desk (NRC)

I. GENERAL COMMENTS

1. Changing the Reporting Due Date Beyond 14 Days

It is acknowledged that the Pilot Plants were able to submit the data in 14 days during the program period. However, establishing the final reporting time limit should be a decision based on prudence, not ultimate capability. The reporting time should be based on having an adequate time to produce, review, and approve the transmittal of this important information. It is believed pilot plants have met the 14-day criteria by submitting data that was regarded as a "best available" product, believing that subsequent minor discovered errors can be corrected on the following report period. Numerous indicator errors were documented by the NRC and reported in a November 14, 1999 public meeting. Comments (from UCS and PIG) at this meeting reflected a desire for accurate reporting over a prompt (14 day) issue of potentially suspect data.

The General Reporting guidance NEI 99-02 states that "The data is submitted electronically to the NRC by the 14th calendar day of the month following the end of the reporting quarter." No reason related to the public health and safety has been provided as the basis for this criterion. While timeliness is a valid consideration in establishing a time limit, it appears prudent to also consider the impact of too short a time limit with regard to the constraints of the data acquisition process. This includes both aspects of licensee input and NRC Inspection Report input.

The Pilot Plants were able to successfully submit the data in 14 days during the program period. Nevertheless, the final reporting time limit should balance the desire for timely reporting with the ability for all plants to support the process, on a long term basis, and without causing unnecessary revisions to the data. The reporting time should be based on having adequate time to acquire, review, and approve the transmittal of this important information. Several indicator errors have been documented by the NRC, and were reported in the November 14, 1999 (PPEP public meeting. Comments from several stakeholders at that meeting also appeared to reflect a public desire for accurate reporting over a quicker report of potentially suspect data.

Even though plants are able to submit data in 14 days, several Pilot Plants recognized the need for additional assurance in the data before submittal and recommend that greater emphasis should be given to PI collection and verification. In addition, some data (such as official dosimetry reports at some plants, and the SR 89-90 quarterly composite samples) requires more than 14 days to process. This could result in "unofficial" data being reported in the indicator with changes made in the following

quarter. Changing data in such a manner could undermine public confidence in the program.

The PI information is too important to hasten data collection to meet an unnecessarily aggressive 14 day reporting requirement. Rather, consistent with other NRC practices, a longer period appears more prudent and would reduce any "time pressure induced" human errors in reporting the PI data.

If, in fact, the 14 day criterion is associated with matching the PI data input to the latest monthly inspection period, and promptly posting them on the NRC's web page, then that too would argue for an extension of the time period. Based on a cursory review of NRC's inspection report data at several plants, the time to receive an NRC Inspection Report -- after the close of an inspection period -- ranged up to 63 days. It would, therefore, seem reasonable that all data (NRC inspection findings and licensee PI data) should, for data consistency, be based on the same time criterion.

Finally, past experience from the Licensee Event Report (LER) process (10 CFR 50.73) would support the observation that short time periods are counterproductive to collect, review, and transmit important information. This conclusion is supported by the NRC's current efforts to extend the LER reporting period to 60 days.

As a result, a prudent period for the reporting requirement appears to be a minimum of thirty (30) days. Such a time period would be consistent with the time required by the NRC to characterize and issue all inspection reports for the quarter. It would seem prudent that the NRC inspection findings and licensee PI data should, for data consistency on the public website, have the same due date.

2. Concerns with Action Matrix

The Action Matrix describes a response by the NRC based on the number and color of various performance indicator windows and inspection findings. It is reasonable to assume that application of NRC discretion may be appropriate in certain cases to permit the NRC to take actions differing from those specified in the Action Matrix. However, frequent deviation from the Action Matrix could result in an erosion of public confidence in the overall process through the perception of inconsistent NRC responses.

Within this context, care should be exercised to ensure that for each of the PI's and SDP's, that a finding is properly categorized consistent with the regulatory licensing basis. In particular, the Action Matrix would prescribe certain actions for a single "YELLOW" finding if a licensee experienced failures of physical intrusion detection

system equipment – yet there is likely no safety significance to the condition since regulations require the prompt posting of a security officer to compensate for the degraded security system. This example would suggest that perhaps the Security PI should be limited to a "WHITE" finding. A review may identify other similar examples.

3. Concerns with Action Matrix Definitions

As noted above, the Action Matrix describes a response by the NRC and Licensee based on the number and color of performance indicator windows, including inspection findings. Although appropriate for the majority of cornerstones of the Reactor Safety Strategic Performance Area, the Action Matrix prescribes responses, which may be inappropriate for degraded licensee performance in other performance areas.

The "Results" categories of the Action Matrix are divided into five categories, ranging from a Category I where the licensee's PI and Cornerstone Inspection Areas are all green, to Category V, where the licensee's performance includes Red - suggesting that plant operation should be suspended. The actions prescribed appear prudent for most of the cornerstones measured under the Reactor Safety Strategic Performance Area. However, in the areas of Emergency Preparedness, Public and Occupational Radiation Safety, and Physical Protection (Safeguards), the Performance Indicators and Inspection Finding (SDP flow charts) may result in an Action Matrix response that may be inappropriate when considering the safety significance or impact on public health and safety.

It is therefore recommended that the PI and SDP thresholds be reviewed against the Action Matrix to ensure the proposed regulatory response is indeed prudent and commensurate with the actual safety significance of issues. Furthermore, the Action Matrix should avoid the use of column numbers (i.e., I, II, III, IV, V). This will preclude categorization of licensees in a fashion similar to that of the SALP process.

4. Concerns with Applicability of 50.9

There are three conditions where inaccurate information could be provided to the NRC: (1) willfulness; (2) administrative error in data preparation; and (3) differing professional opinion in that the definition of the PI as interpreted by an inspector differs from the interpretation of the licensee. Issue 1 (willfulness) is handled appropriately in the existing enforcement policy.

Issue 2 (administrative) was discussed by the Office of Enforcement (OE) and related to determining "materiality" through the consequences of the error – i.e., did the error result in a licensee changing color bands. It appears prudent to use the range of enforcement categorizations, as proposed by NEI and OE, to assign a minor violation, NCV, or Severity Level IV violation to such situations.

Issue 3 (differing opinions) should be processed within the existing NRC/NEI's Frequently Asked Questions (FAQs) process. The FAQs provide a mechanism to advise licensees of NRC clarifications and enhancements to the PI definitions and program implementation. It appears prudent to institutionalize the use of FAQs for at least three years, if not permanently. Enforcement is not an appropriate regulatory tool for resolving differing opinions on PI definitions between the NRC and licensees. Resolution through the FAQ process provides consistency, and ensures open public communications.

5. Concerns with Potential for Bypassing Regulatory Process

The Revised Reactor Oversight Process is a significant revision to the NRC process for overseeing the performance of commercial nuclear power plants, and includes integrating the inspection, assessment, and enforcement processes. The proposed changes would establish an oversight process which requires the measurement of performance using specific metrics. These performance indicators (PIs) will not only measure licensee performance, but they will -- by their very nature -- create a set of incentives and disincentives which could influence operational priorities and behavior. As such, the performance indicators may have the potential to themselves impact the safety of plant operation.

Given this potential impact, it appears prudent that the same rigorous process should be used to adopt, utilize and revise these metrics that would be used for a regulatory requirement. That is, care should be exercised that: (1) the metrics do not unintentionally motivate behavior which is contrary to safety (or inconsistent with regulatory requirements); (2) the NRC should be explicit concerning the bases for the metrics in existing regulations (or necessary changes to the regulations should be adopted); (3) the opportunity for public comment should be afforded for any changes to the metrics to be used; and (4) adequate definitions should be provided to ensure that metrics are consistently used by all licensees.

II. PERFORMANCE INDICATORS

1. Fault Exposure Hours

The NRC has stated, in public meetings, that the current Mitigating System metrics are to be replaced during the 2001 period, with an "unavailability index" (to be developed). The reason for this action was to address the disruption caused by the fault exposure hour factor. Delaying the implementation of this metric to allow for full public review and comment appears a prudent NRC action.

2. Concerns Over Process for New Indicators

It is recognized that PIs will evolve as the need for additions or deletions are identified. A process for the orderly development and implementation of such additions or deletions should be established so that predictability and consistency can be maintained. Several potential future changes to the PI's for the year 2001 time frame were discussed at the October 1999 NEI Performance Indicator Workshop in Orlando Florida, some of which include the following:

- Replace Scrams with initiating events that challenge the plant. For example, loss of condenser, loss of all feedwater, or loss of offsite power.
- Add unreliability PI and eliminate Fault Exposure unavailability hours
- Add a broader set of risk significant systems and eliminate Safety Significant Functional Failures
- Add Fire Protection Indicators
- Improved Security Indicators
- Add Shutdown Indicators
- Pursue use of EPIX for data collection and calculation.

As discussed in the previous section, future new or revised PI's should go through the same process that the initial PIs went through (i.e., initial public review and comment, coordination with NEI, pilot plant testing phase, lessons learned, and final public comment). Further, it has been expressed at the NRC Workshops by NRC staff that with each addition to the current PI set, there is a corresponding decrease in the associated baseline inspection area.

3. Reporting Period Contingency Planning

Experience with WANO and INPO reporting would suggest that periodic preparation problems may occur in the generation or electronic transmittal of the PI report. Accordingly, there should be clear information provided to address contingencies and consequences for failure to meet the submittal period. While it is difficult to anticipate all the problems that could lead to the inability to submit the data, it is clear that the data collection process relies on a large number of people providing data in a short period of time, and the entire process is heavily reliant on computer systems. A process for granting relief on the submittal timing should be established and communicated.

4. Future FAQ Process

The NRC/NEI's Frequently Asked Questions (FAQs) are among the most significant and important aspect (from an implementation perspective) of the Revised Reactor Oversight Process elements. The FAQs provide a mechanism to advise licensees of NRC clarifications and enhancements to the PI definitions and program implementation. It appears prudent to institutionalize the continued use of FAQs (for at least three years, if not permanently). Enforcement is not an appropriate regulatory tool for resolving differing professional opinions on PI interpretations between an NRC inspector and the licensee. Resolution through the FAQ process provides consistency, and ensures open public communications.

5. Multiple Inconsistent Scoring Between PIs and Inspections/SDP

At public meetings, the NRC indicated verbally that if an inspection finding was covered by a PI, the NRC would carry the item only in the PI and not duplicate the item as an SDP inspection finding. However, this position has not been formally documented. It would be helpful if the NRC issued guidance to this effect.

6. Security PI Issues

Currently there is no regulatory restriction to a compensatory posting when a portion of the plant's Intrusion Detection System (IDS) equipment is out of service. (In fact, it is arguable that compensatory postings are actually superior to the IDS system.) Nevertheless, the Security equipment performance indicator is calculated by an algorithm and threshold which necessitates an annual average 99.75% equipment availability to maintain a GREEN categorization (for a ≥20 zone IDS). To ensure a 99.75% equipment availability (out of service less than 24 hours per year), will require at least some licensees to provide special round-the-clock availability of maintenance personnel.

In the past, licensees have been able to prioritize maintenance on security IDS equipment commensurate with the safety significance the IDS work and when compared to other required maintenance activities. It appears inappropriate to have an algorithm which creates the unintended consequence of artificially elevating the priority of non-safety related equipment maintenance of the IDS system above that, for example, of a channel of the Reactor Protective System.

Imposition of such unreasonably stringent requirements here, without any commensurate improvement in overall plant safety, appear to be ill advised and may in fact prove counterproductive by artificially diverting future plant maintenance priority to the IDS systems.

In summary, as noted at several NRC public meetings, the Protected Area Security Equipment Performance Index has several limitations including:

- The algorithm results in a requirement, for licensees with ≥20 security intrusion detection zones, for an average zone availability of 99.75% per year. This equates to a per zone unavailability of less than 24 hours per year. This is a higher availability than the Mitigating System PIs (emergency power, safety injection, et al) are expected to have.

- The unavailability of the security intrusion detection equipment is not a regulatory requirement (i.e., there is only the regulatory requirement to provide compensatory posting of a security officer for a zone out of service). Therefore, the worst significance categorization for this PI should be limited to "WHITE".

- Faced with the potential for a security zone's intrusion detection equipment to fail but with the option available to properly post a security officer in the failed zone in accordance with the regulations, it has been a business decision whether to have "round-the-clock" maintenance personnel available to respond to equipment outages. This metric would inappropriately impose a strong non-regulatory incentive to change licensee's business practices, with no corresponding increase in plant or public safety. It is believed this was not the intent of the PI program.

- It is noted that the result of the current Security PI algorithm is to drive security IDS equipment availability to 99.75% (notwithstanding that a security officer is posted as a compensatory measure). This seems non-risk informed when it is viewed against reactor safety systems, such as the plant Reactor Protective System, where a single channel can (in full accordance with the Technical Specifications) be placed in bypass indefinitely.

NEI has repeatedly provided alternatives to this indicator. An alternative should be adopted which resolves these issues, prior to final implementation.

7. EP Incorrect Reference to 15 Minute Classification

In NEI 99-02, Revision D, the definition of *"timely"* includes a 15-minute goal as the limitation for classification determination and Protective Action Recommendation (PAR) development (page 78, lines 21 – 23). The NRC base document used by the industry as guidance for classification timeliness is Emergency Preparedness Position (EPPOS) No. 2, issued August 17, 1995. In the memo and EPPOS, a 15-minute time is recommended as a guideline for the Staff to use in the evaluation of a licensee's performance of classifying an event. The EPPOS specifically states that other factors are to be used to determine if a classification was made appropriately and timely, not just a 15-minute clock. The EPPOS is clear in stating that there is no regulatory statement on a classification time limitation. Therefore, the guidance and the PI criteria appear to be in conflict.

There is no reference (in EPPOS No. 2 or other guidance) to a 15-minute or other time frame in which PARs are to be determined. The industry practice is an ongoing evaluation of estimated dose calculations and field team observations to determine the impact of offsite dose. Dose calculation updates are typically provided on a 30-minute time frame throughout the industry.

The guidance in NEI 99-02, Revision D defines a more restrictive time limit as an exclusive determinate for classification performance and establishes a new time limit for PAR development. It appears prudent that the definition of "*timely*" should mirror the established regulatory and industry expectations. For example, the Definition of Terms section could be changed in the following manner:

"*Timely*" means:

- Emergency action levels (EALs) are reviewed and classifications made promptly following the recognition (of personnel responsible for classification) that EALs have been exceeded.

- Protective action recommendations (PARs) are promptly determined when conditions are present and continually reviewed and updated, as appropriate.

- Offsite notifications are initiated (verbal contact) within 15 minutes of event classification, PAR determination, or classification or PAR change."

The Clarifying Notes section (beginning on page 79, line 25) could be changed in the following manner:

"Classification should be made promptly following the recognition (by those responsible for classification) that conditions have reached an emergency classification threshold in accordance with the licensee's EAL scheme. "

8. Application of Current Performance Indicator Criteria for Historical Data May Result in Unreliable Indicators for the Initial Indicator Period

Some PI definitions and associated guidance provide inappropriately restrictive limitations on use of NRC approved alternatives when selected equipment or systems are out of service. Provisions are needed in selected PIs to waive equipment unavailability when there are NRC approved alternatives permitted by Technical Specifications or license conditions.

For example, some plant operations or configurations are implemented to support one-time evolutions and are not indicative of regular plant operation. A specific plant configuration for a limited time, allowed by Technical Specifications, may not be indicative of regular plant performance, and may never again be implemented for the life of the plant.

One plant offered this example:

> The Technical Specification LCO for RHR required, in part, two RHR shutdown cooling subsystems to be operable while in Mode 4. In addition, with one or two RHR shutdown cooling systems inoperable the Action statement required verification that an alternate method of decay heat removal is available for each inoperable RHR shutdown cooling subsystem. In May 1999, the proposed RHR Unavailability performance indicator was 0.7%, Green. The PI had been between 0.2% and 0.7% for 1998 and 1999 to date. In June 1999, the plant entered Mode 4 for a one-time hold for approximately one month in an effort to extend the fuel to support a refueling outage scheduled for September 1999. The June outage was planned as part of the conversion to a 24-month fuel cycle. During the June fuel savings dispatch the B RHR subsystem was removed from service for maintenance and was unavailable. The NRC had approved the alternate method of decay heat removal when the B subsystem was not operable. Therefore, the plant was within Technical Specification requirements, and the alternate decay heat removal method was approved by the NRC. The plant logged 659 hours of RHR subsystem unavailability during June 1999.
>
> The NRC approved alternate decay heat removal method used during the June 1999 outage does not meet the criteria imposed by NEI 99-02. Therefore, counting this out of service time in the proposed RHR Unavailability performance indicator results in a White color due to the 659 hours of unavailability in June 1999. For the next year, it appears there will be no "band" in which the licensee can control operations to maintain the baseline inspection process or operate without regulatory involvement.

9. Review of New LER Rule versus Related PIs

10 CFR 50.72/73 changes are currently underway. A FR Notice proposes to amend the event reporting requirements for nuclear power reactors: "... to update the current rules, including reducing or eliminating the reporting burden associated with events of little or no safety significance; and to better align the rules with the NRC's needs for information to carry out its safety mission, including revising reporting requirements based on importance to risk and extending the required reporting times consistent with the time it is needed for prompt NRC action..."

The likely changes include changing the reporting requirement to issue the LER from 30 days to 60 days, and other changes including what constitutes a 10 CFR 50.73(a)(2)(v) "event or condition that alone could have prevented the fulfillment of a safety function". This could effect the PI for the Safety System Functional Failure

indicator, which is based on 10 CFR 50.73(a)(2)(v) and the date of the LER. The potential exists for the guidance for the new reporting rule and the NEI 99-02 guideline to be conflicting on some aspects.

It appears that the final 10 CFR 50.73(a)(2)(v) and NEI 99-02, should be reviewed to ensure that both sets of guidelines are consistent.

10. Guidance on 1/21/2000 Submittal

Regulatory Issue Summary 99-06 and NEI 99-02 (Draft Revision D) provide guidance for the 1/21/2000 submittal of historical performance indicator data. However, additional guidance appears prudent, which would include:

- definition of the computer hardware and software needed to prepare the data in the proper format for submittal;
- instructions on how verification and validation can be performed on the "delimited data stream" to be sent to the NRC;
- NRC's plans and methods for utilizing the data received;
- how to handle partial period data entries (only having one month's data for a quarterly value, or 6 months' data on an annual value; and
- statement of NRC's policy on the applicability of 10 CFR 50.9 to this submittal.

In addition, an industry guidance document such as NEI 99-02 may not be the optimum vehicle to promulgate NRC policy information on standards for data quality and accuracy. It may be prudent to consider issuance of the final guidance by the NRC as a NUREG document.

11. Occupational Exposure PI

100 mRem is too small to measure "unintended" dose when the intended dose is high. The PI definition could, for example, include the AND statement "and greater than 40% above the dose control applied to an RCA entry."

III. SIGNIFICANCE DETERMINATION PROCESS

1. Security – Use of New SDP Flow Chart

The Security Significance Determination Process has been discussed by NEI at several NRC public meetings, yet it remained unchanged. For example, the SDP flowchart immediately (first box) refers to "low risk" and "some risk" – with the only definition provided being "low risk" is "...no risk or low risk...". Risk determination should be the outcome of the process not an input assumption. In the current process, it could be concluded that "Low Risk" means "no risk", while "Some Risk" means "any risk".

It appears that the Security SDP was based on prior enforcement compliance concepts, not forward looking risk informed concepts. This will result in public confusion about safety significance using this SDP - consistency is vital to maintaining public understanding and confidence in the regulatory process, in that all grades (GREEN, WHITE, etc.) should represent similar relative risk to public health and safety.

An alternative Security SDP provided by NEI (at a recent public NRC meeting) is clearer, more precise, and will result in less subjective interpretation. This approach is depicted in a new logic diagram that includes linkage to the Reactor Barrier SDP. These changes align this cornerstone with common risk thresholds, and makes the outcome of security related findings more objective and predictable.

2. Fire Protection SDP Implementation Concerns

It is requested that additional time (beyond 12/31/99) for Public review and comment, be provided for the Event and Fire Protection SDPs (or any new SDP), which has not been involved in the pilot plant process. It is difficult to comment on new SDPs in such a short period. It is recommended that the SDP be piloted and issued later in the program (i.e., consistent with the April 1, 2001 implementation date for additional NRC PIs).

3. Better Screening for Entering/Exiting SDP

In many instances, once a finding is evaluated under the SDP process, the minimum significance assigned to the finding is "green". There is no provision in the SDP for making a finding something less significant than a "green" risk significance.

Therefore, it appears prudent to ensure appropriate "exit" points, where "no color" could be the appropriate categorization.

4. Occupational Exposure SDP

The NRC's Revised Reactor Oversight Process should use the 5 year cumulative occupational dose average to measure a licensee's ALARA performance rather than 3 year average. The 5 year average is significantly better than the 3 year average in damping the effects of year-to-year variations due to refueling outage dose. While the 3 year average gives the false impression that ALARA performance is changing year to year, the 5 year average gives a better measure of radiation protection ALARA performance, consistent with NUREG-0713 "Occupational Radiation Exposure at Commercial Nuclear Power Reactors and Other Facilities" which has established the 5 year average as the NRC standard since the 1970's.

IV. INSPECTIONS

1. Programmatic and Cross Cutting Issues

There does not appear to be guidance on how to determine when an observation of a cross-cutting area should be documented as a formal inspection finding. The documentation and treatment of observations in cross cutting areas appears to be left up to individual inspectors and management. Policy guidance could be provided in Inspection Manual Chapters to specify how the significance determination of inspection findings from cross-cutting issue areas shall be determined.

For example, if a Problem Identification and Resolution (PIDR) inspection concludes that a root cause evaluation and corrective action was inadequate to restore quality of a component, affecting mitigating system cornerstone performance, then the significance should be assessed by identifying the specific equipment deficiency, and by entering the Reactor Safety SDP to determine the risk significance of that deficiency. Similarly, if a PIDR inspection concludes that inadequate corrective action was taken for training deficiencies in the Emergency Planning Area, then the direct effect of the deficiency, if any, on actual performance of the Emergency Planning Cornerstone should be assessed through the Emergency Planning SDP. It is inappropriate that a PIDR finding that had no direct impact on cornerstone performance could be classified as white or yellow.

2. Increase in Core Inspection Hours

Recent indications are that baseline inspection effort for those facilities in the "all GREEN" category will consist of approximately 1842 direct (on-site) inspection hours and a plant performance module performed by the resident inspector staff which has been estimated to be 200 to 900 hours of direct inspection effort. Any reactive inspection effort would be in addition to these efforts.

Preliminary analysis of direct inspection effort comparing the old SALP based on inspection planning process would suggest that facilities with all Category-1 SALP scores or facilities with 3 Category-1's and 1 Category-2, may experience an increase in inspection effort under the new process. It is understood that the inspection resource allocation is under review and is a dynamic situation at present; however, the observation is provided for future evaluation.

3. Timeliness of Inspection Reports

NEI 99-02, Draft Revision D, states that "The data is submitted electronically to the NRC by the 14th calendar day of the month following the end of the reporting quarter."

The NRC inspection reports will appear on the NRC website below the PIs for a given quarter. It appears prudent that licensees and the public are provided with timely and consistent information from both sources. Accordingly, providing an NRC inspection report "schedule" for completing the report and categorizing the findings in accordance with the SDP process, which is "out of sync" with the licensee PIs, could result in confusion and loss of licensee and public confidence in the NRC program. Both licensees and NRC should be able to take extra time when needed to evaluate an issue so that the real significance can be communicated to the public one time in a comprehensive manner. This is particularly applicable to documentation of findings in an inspection report as having potential risk significance. Rapid reporting of preliminary or incomplete information in an NRC inspection Report does not increase public confidence if that preliminary information must later be revised.

V. ENFORCEMENT

1. Amnesty Period

The Office of Enforcement (OE) has expressed an intent at recent public meetings to provide a suitable "amnesty" period for exercising enforcement discretion during the initial implementation of this program. The industry, through NEI, will be working closely with the NRC on selecting the appropriate period. In making that selection, we believe it is prudent to allow for a sufficient period, one which should include opportunities for all inspection modules to be conducted at each facility at least once.

There have been two kinds of NRC enforcement discretion: (1) the NRC has actually written a notice of violation but dispositioned with words similar to "... Although the event constitutes a violation, enforcement discretion is being applied and no citation is being applied..."; or, (2) the NRC has not written a notice of violation, and has noted the discrepancy in the inspection report with the licensee corrective action. The first action (1) could lead to public confusion as to the actual disposition. It appears prudent to consider the second (2) approach as the preferred method for providing enforcement discretion during the "amnesty" period. As such, the NRC could simply note the discrepancy in the inspection report along with the licensee's corrective action, and refrain from issuing a formal Notice.

2. 0610 Review and Comment

Section 05.04 of Manual Chapter 0610* provides guidance for documenting noncompliance. In subsection "a.2," steps to be taken during an inspection for significant enforcement issues are described. It appears that the guidance in this section assumes significance, when it is actually describing the steps necessary to determine significance.

Significance should be determined after completing the Significance Determination Process (SDP), including a Phase 3 significance determination, if needed. There should be no presumption of significance in the process prior to that time. While Phase 1 and 2 of the SDP may indicate potential significance, a Phase 3 determination will usually be needed to conclude significance.

Section 05.04, subsection "a.3" provides guidance on timeliness for determining significance of an enforcement issue. It states that the actions in the prior section should be completed during the inspection period; and, if not completed, should be

documented as an apparent violation. This approach appears to assume significance when none has been concluded. It may cause undue concern by readers of the report, prior to an actual determination of significance.

Every effort should be made by NRC and the licensee to promptly resolve enforcement issues as described in the guidance. However, the information required to be supplied for a determination of significance may take more time than the inspection period, especially when a Phase 3 determination is required. The requested information includes information related to significance as well as a determination of root cause and an acceptance of the violation by the licensee, prior to documentation of the issue in an inspection report. If the determination of significance is not timely, an apparent violation will be included in the report. The term "apparent violation" has been primarily used in the past to identify potential escalated enforcement issues. As described in the guidance, use of this term at this point in the process will give the appearance of significance, when none may actually exist.

Subsection "a.2" should read, "For issues that are initially believed to be potentially significant,..."

If an enforcement issue cannot be resolved during the inspection period, an Unresolved Item (URI) should be identified in the inspection report. The facts should be identified, and required information identified for resolution. Significance should only be discussed in the inspection report after the completion of the SDP.

3. Continued Use of FAQs

The NRC/NEI's Frequently Asked Questions (FAQs) are very important and valuable from an implementation perspective. The FAQs provide a mechanism to advise licensees of NRC clarifications and enhancements to the PI definitions and program implementation. It appears prudent to institutionalize the continued use of FAQs. In particular, enforcement should not be used as a regulatory tool for resolving differing professional opinions on PI interpretations between the NRC and licensees. Resolution through the FAQ process for an interim period after implementation would provide consistency and help ensure open communications.

We therefore recommend formalizing the continued use of the FAQ process for at least the next three years.