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PROPOSED RULE **PR 73**
(65FR 36649)

Secretary
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attention: Rulemakings and Adjudications

Subject: Response to Request for Comments on SECY-00-0063, "Re-evaluation of Power Reactor Physical Protection Regulations and Position on a Definition of Radiological Sabotage"

References: (1) Volume 65, Federal Register, Page 36649 (65 FR 36649), dated June 9, 2000

(2) Nuclear Energy Institute (NEI) letter, "Request for Comments on Proposed Re-evaluation of Physical Protection Regulations, 65 Fed. Reg. 36649 (June 9, 2000)," dated August 23, 2000

Commonwealth Edison (ComEd) Company appreciates the opportunity to comment on SECY-00-0063, "Re-evaluation of Power Reactor Physical Protection Regulations and Position on a Definition of Radiological Sabotage." This letter provides our comments in response to Reference 1. ComEd has been actively involved with the NEI on this issue and fully endorses the industry comments submitted by the NEI in Reference 2.

If you have any questions or require additional information please contact me at (630) 663-7330.

Respectfully,

R. M. Krich
Vice President - Regulatory Services

Attachment 1: Specific Comments on SECY-00-63, "Re-evaluation of Power Reactor Physical Protection Regulations and Position on a Definition of Radiological Sabotage"

Attachment 1

Specific Comments on SECY-00-63, "Re-evaluation of Power Reactor Physical Protection Regulations and Position on a Definition of Radiological Sabotage"

Commonwealth Edison (ComEd) Company supports the re-evaluation of security regulations provided that this effort is completed prior to adding new requirements to the existing regulations. ComEd recommends that existing performance criteria (i.e., significant core damage) used in the Operational Safeguards Response Evaluation (OSRE) program be retained and there is no need to introduce a different performance criteria (i.e., critical safety functions). ComEd endorses industry efforts to implement a self-assessment program to be used both as an interim and long term program which would eliminate the need to add OSRE requirements to the regulation.

Re-evaluation of the Regulation

ComEd agrees in principle that 10 CFR 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage," requires revision. The proposed rule change should place emphasis on attributes of a defensive strategy rather than a compliance-based approach. As part of the rulemaking process, there is a need to conduct a comprehensive review of existing security regulations and requirements in order to eliminate unnecessary regulatory burden prior to adding additional regulatory requirements.

In conjunction with the effort to re-evaluate and revise the rule, an effort to define the characteristics of the adversary must be accomplished. While it is acknowledged that the Regulatory Effectiveness Review (RER) Program and the OSRE Program do test the licensee's capability to respond to an adversary attack, there was and currently is no criteria established to clearly and specifically identify what the licensee's are required to defend against. It is important that a scrutable, consistent, and repeatable criteria for evaluating licensee performance in defending the facility be established. Over time, criterion changes may be necessary due to world events. Changes to criteria should be subject to the same rigorous process used to establish the original criteria.

Self Assessment Program

The Industry is proposing a Self Assessment Program (i.e., NEI-99-07, "Safeguards Performance Assessment Program," draft) that would be implemented on an interim basis, with NRC oversight, until the rule can be changed. ComEd endorses this program not only as an interim measure but also as a long term process that would eliminate the need for an OSRE section in a revised rule. NRC consideration of licensee self-assessments is consistent with the NRC's Revised Reactor Oversight Process that was effective April 1, 2000, and would be comparable to the industry's effort for Access Authorization.

The Industry's Self Assessment Program also contains the performance criteria that could be used as the design basis for the new rule as proposed in the Staff's proposal identified in the recommendation section of the SECY.

Defense Against Radiological Sabotage

ComEd considers that the Staff seeks to clarify licensee's performance in defending against radiological sabotage by requiring that licensee's protect "critical safety functions." ComEd recommends that core damage be retained as the design criterion that provides the basis for the physical protection regulation. Licensee's currently use analysis concepts similar to the protection of critical safety functions in the identification of their target sets and defensive strategies. These targets sets have been validated by the NRC's OSRE Program over the last eight years.

The concept of a critical safety function is not clear and creates confusion due to its inconsistency with the NRC approved and validated "target set" concept which has been a standard which all OSRE evaluations have used and supports the core damage criteria. If critical safety functions are used as the design basis criteria, it appears that the loss of a critical safety function could result in a violation of a regulation while the threat to public health and safety has not been established. The loss of a critical safety function is assumed to, but may not necessarily, result in core damage resulting in an ambiguous standard for protection. Inclusion of the critical safety function in the regulation would create opportunities to cite licensee's for limited failures to protect equipment even when that equipment loss may be part of a planned defensive strategy. It is conceivable that the use of the critical safety function concept will result in subjective or inconsistent NRC assessment of licensee performance, whereas the use of core damage is a clear standard by which to evaluate the success of a plant's response.