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Chief, Rules and Directives Branch
Division of Administrative Services
Office of Administration
U.S. Nuclear Regulatory Commission
Mail Stop T6-D59
Washington D.C. 20555-0001

**Re: Comments on Proposed Generic Letter on Grid Reliability and the Impact on <u>Plant Risk and Operability of Offsite Power (70 Fed. Reg. 19125 (April 12, 2005))</u>**

Dear Sir/Madam:

On behalf of the Nuclear Regulatory Services Group ("NRSG"), we submit these comments on the Nuclear Regulatory Commission's ("NRC") proposed Generic Letter ("GL") concerning grid reliability.[1] We recognize that new circumstances have emerged due to restructuring of the electric utility industry pursuant to state and federal policies. These changes include the separation of transmission from generation, as well as the creation of Regional Transmission Organizations ("RTOs"). The August 14, 2003 blackout also raised legitimate concerns about reliability of the grid. These changed circumstances, as the NRC rightly observes, have created a need for new arrangements for effective communication and coordination between a nuclear power plant ("NPP") licensee and the transmission system operator ("TSO").

In view of the complexities of this issue, however, we believe the NRC would benefit from engaging all stakeholders – NPP licensees, TSOs, reliability organizations, and other interested agencies – in an effort to develop standardized guidance in this area. For this purpose, we recommend that the NRC conduct a public technical conference with all stakeholders for the purpose of developing guidance, which may include model communication protocols, in lieu of moving forward with issuance of the GL at this time.

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1 The NRSG is a consortium of power reactor licensees represented by the law firm of Ballard Spahr Andrews & Ingersoll, LLP.

SISP Review Complete

E-RIDS = ADM-03
Add = A. MARKLEY (AWM)
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## Comments

### *1. The GL Positions Should Not Be Characterized As Necessary For Compliance With Existing Regulatory Requirements*

The proposed GL sets forth highly prescriptive NRC expectations for communications and coordination between the NPP and the TSO. For example, the information required to be submitted pursuant to the GL under 10 C.F.R. 50.54(f) includes a description of the "formal agreements" between the NPP and TSO related to notification of surrounding grid conditions, and information on whether the TSO uses a real-time contingency analysis ("RTCA") program to determine grid conditions that could affect operability of off-site power systems. In the proposed GL, the NRC expresses concern that, in the absence of such measures to address grid reliability, "compliance with applicable regulations may not be assured." 70 Fed. Reg. at 19126. As the regulatory basis for the GL positions, the NRC relies on General Design Criterion ("GDC") 17 and related plant Technical Specifications, the Station Blackout ("SBO") Rule, 10 C.F.R. 50.63, and the Maintenance Rule, 10 C.F.R. 50.65.

In our view, the GL would quite clearly establish a number of new regulatory positions that would go beyond previous interpretations of what is necessary for compliance with the regulatory requirements. For example, GDC 17 is a design standard used in the development of the plant's electric power systems, but does not prescribe methods to operate and maintain the design (see Regulatory Guide 1.93). Nor does GDC 17 require that the NPP continually assess the conditions on the transmission system. Compliance with GDC 17, which was established prior to issuance of an operating license, should be assured unless the plant design is altered. Since the enhanced operating and maintenance practices suggested in the proposed GL are not related to a plant design change, such practices should not be characterized as necessary for compliance with the design standard of GDC 17.

Nuclear power plants, as part of their current licensing basis, already have been found to meet the applicable design standards and other regulations, including GDC 17, in order to maintain their operational status. Licensees continually demonstrate such compliance through defense-in-depth design, rigorous analytical approaches, and risk-informed procedures, which are *based on the philosophy of coping with, not necessarily preventing, anticipated operational occurrences or accidents,* such as degraded grid events. For example:

- The capability of nuclear plants to respond to a loss of offsite power ("LOOP") event was successfully demonstrated during the August 14, 2003 blackout. The existing plant design with adequate independence and redundancy of onsite power systems, as required by GDC 17, coupled with appropriate plant operational procedures, responded to and coped with the LOOP event as expected.

- For an SBO condition, compliance with 10 C.F.R. 50.63 is demonstrated by the current design and operational procedures, which would rely upon the plant alternate AC and DC power sources to achieve and maintain a safe shutdown condition based on plant-specific analysis, in accordance with Regulatory Guide 1.155. Even assuming the August 14, 2003 blackout were to call into question the assumptions used to establish SBO coping duration categories (which we do not

believe is the case), it should not have any impact on the method of compliance with the SBO rule for plants relying on alternate AC sources since those plants are required to cope with an SBO only until the alternate AC source becomes available.

- Pursuant to 10 C.F.R. 50.65(a)(4), the risk assessments currently performed to manage risks during preventive and corrective maintenance activities at nuclear plants take into account the impact of LOOP on the temporary plant configuration and prepare for appropriate contingency measures, if warranted. Pursuant to existing Interconnection Agreements, the NPP and TSO may also notify each other and coordinate on maintenance activities involving electric power systems. However, 10 C.F.R. 50.65(a)(4) does not direct that the NPP conduct a grid reliability evaluation prior to performing maintenance on risk-significant equipment. A review of 10 C.F.R. 50.65(a)(4) violations concerning offsite power circuits, as described in NRC Inspection Reports ("IR") (see, e.g., ANO-1 IR 2004-03 and 2004-04; Crystal River IR 2005-02; Indian Point-2 IR 2001-08; and Farley IR 2003-03) does not indicate that communication and coordination between the TSO and the NPP has been a cause of those violations.

In addition, the NRC inspections conducted using Temporary Instructions ("TI") 2515/156 and 2515/163 to confirm compliance with GDC 17, 10 C.F.R. 50.63 and 10 C.F.R. 50.65 concerning grid reliability have not revealed any significant plant-specific or generic issues of non-compliance. If the NRC inspection results have not shown significant compliance problems, the need to issue a GL for the purpose of achieving compliance is questionable.

It is evident from the foregoing discussion that there is no need for the NRC to reopen any rule or impose additional requirements for restoration of public health and safety, which is already adequately protected by the current plant design and continuing compliance with existing regulatory requirements *irrespective of the source of the initiating event.* No significant non-compliance by a NPP was exhibited during the August 14, 2003 event. On the contrary, the response of the nuclear plants to the LOOP condition was as expected. Therefore, the proposed GL should not imply that the new actions and positions set forth therein are necessary for "compliance" or that failure to have the listed measures in place is a violation, a position that could have enforcement implications.

It is not the purpose of a GL to impose new regulatory positions and expectations on licensees by presuming that licensees are in noncompliance with existing regulatory requirements as a result of an emerging issue. Such a presumption of noncompliance expressed via a GL illegitimately shifts the burden of compliance onto licensees when an emerging issue arises that was not specifically addressed in current regulations and the existing plant licensing bases. As discussed below, if the NRC does proceed with issuance of the proposed GL, we believe it should be treated as a backfit under 10 C.F.R. 50.109.

### *2. The NRC Should Recognize Its Limited Authority Over TSO/NPP Relations*

It appears from the proposed GL that the NRC expects licensees to enter into formal agreements with the TSO establishing appropriate communication protocols and coordination for

early detection of degraded grid conditions. According to the NRC, such communication interface with the TSO "is important to enable the licensee to determine the effect of [grid condition] changes on operability of the offsite power system," to consider, among other things, "rescheduling maintenance activities," and to take "alternate equipment protection measures and compensatory actions to reduce the risk." 70 Fed. Reg. at 19127.

The NRC should recognize that it has limited jurisdiction to regulate the relationship between the TSO and the NPP. Existing NRC regulations do not mandate that a NPP must have particular formal agreements in place with the TSO or that the NPP or TSO utilize any particular method of monitoring grid conditions such as an RTCA program. Further, during its approval of utility restructuring initiatives, such as the creation of holding companies, separation of generation from transmission, and formation of the TSO, the NRC has not attempted to regulate the details of the communications protocols and other arrangements between the NPP and TSO.

Maintaining the reliability of the transmission system and monitoring grid conditions is the responsibility of the TSO along with the regional reliability councils. At most, the NRC has overlapping jurisdiction in this area with the Federal Energy Regulatory Commission, state public service commissions, and the North American Electric Reliability Council ("NERC"). Any NRC requirements for NPP/TSO communications must be reconciled with the governing standards of these agencies, including FERC's Standards of Conduct.

Similarly, the NRC should recognize that there are regional differences with respect to the need for formal agreements between the NPP and its particular TSO. In some regions, vertically integrated utilities still control both generation and transmission, or the generation and transmission functions have been split but are handled by affiliated entities. In other regions, such as the PJM region, restructuring initiatives have been implemented and a mature RTO is in place. As a result, a "one-size-fits-all" approach by the NRC is not appropriate. The GL should recognize that regional differences exist, and that the need for special formal agreements should depend on the situation in that particular region.

For example, where the power generation function and transmission/distribution function are part of affiliated organizations, a formal agreement may not be necessary between the two organizations to prepare for and mitigate the effect of a degraded grid condition where internal corporate policy and procedures are already in place to establish required communication protocols. Similarly, in regions served by mature RTO organizations, adequate communication and coordination arrangements may already be in place.

### *3. Licensees Should Be Allowed To Take Credit For Existing Agreements With TSOs*

Along these same lines, the NRC should explicitly allow licensees to take credit for provisions of existing Interconnection Agreements and related protocols that ensure adequate communication and coordination between the NPP and TSO. Many NPP licensees in recent years have entered into Interconnection Agreements ("IA") with their respective TSOs as a result of restructuring initiatives or sales of NPPs. In cases subject to license transfers, the NRC's review has included the terms of the IA. The IA, together with related protocols between the NPP and TSO, ensures the availability of off-site power to the plant in order to maintain compliance with GDC-17, and addresses maintenance responsibilities in order to ensure

compliance with the Maintenance Rule and other applicable regulations. The IA and related protocols typically set forth the responsibilities of the NPP and TSO with respect to such things as maintenance of switchyard equipment, notification to the NPP control room of work activities affecting the power systems, and access to the switchyard during normal and emergency operations. Accordingly, the GL should allow licensees to take credit for the procedures and communication requirements already in place pursuant to an existing IA for purposes of meeting the positions set forth in the GL.

*4. The Proposed GL Should Be Treated As A "Backfit"*

If the NRC does decide to move forward with issuance of the proposed GL, it should be addressed in a straightforward manner as a backfit and justified with an appropriate backfitting analysis meeting the standards of 10 C.F.R. 50.109. According to 10 C.F.R. 50.109(a)(1), any modification of procedures or organization required to operate a nuclear facility is considered to be a "backfit" if it results from "the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previously applicable staff position."

In this case, the NRC Staff is reinterpreting the regulations, such as GDC 17, 10 C.F.R. 50.63, and 10 C.F.R. 50.65, to require licensees to monitor and consider grid conditions in specific ways that were not a basis for compliance as part of the original promulgation of those regulations. Such positions taken by the NRC via the proposed GL would represent new or different regulatory positions from the original scope of the regulations, which in turn would require licensees to modify or add appropriate organizational responsibilities, procedures and other protocols. For example, existing regulations do not specify that NPPs must have formal agreements in place with TSOs, or that an RTCA program must be used to monitor the condition of offsite power systems. Thus the imposition of new NRC positions for formal agreements between the NPP and TSO and for use of RTCA programs, as described in the proposed GL, would constitute a "backfit." In these circumstances, it is not appropriate for the NRC to use 10 C.F.R. 50.54(f) to require licensees to submit information on agreements with the TSO and the use of RTCA programs when the underlying regulatory basis for such matters is unclear.

Under the NRC's backfitting rule, a backfitting analysis meeting the standards of Section 50.109(a)(3) must be performed to demonstrate that the new positions produce a cost-justified substantial increase in overall protection of public health and safety. In this regard, none of the exceptions to the backfitting rule would apply in this instance. Pursuant to 10 C.F.R. 50.109(a)(4)(i), (ii), and (iii), a backfitting analysis is not required if the NRC action is necessary to restore compliance or adequate protection.

As discussed above, all NPPs have already been found to comply with the applicable scope and content of GDC 17, 10 C.F.R. 50.63 and 10 C.F.R. 50.65 and to conform with the associated commitments. Such compliance was confirmed not only during licensing reviews, but also during detailed NRC inspections, including Electrical Distribution System Functional Inspections ("EDSFIs") conducted in the 1990s, and the SBO and Maintenance Rule team inspections. Continuing compliance with the regulations, as originally promulgated and currently enforced, also ensures adequate protection of public health and safety. Further, the GL does not indicate that the additional measures that would be required of licensees are based on the need to redefine the level of protection considered adequate, which would typically be the

function of a rulemaking. Accordingly, none of the exceptions to the backfitting rule's requirement for a cost-benefit analysis would apply.

*5. The NRC Should Organize A Technical Conference With Stakeholders*

Before proceeding with the proposed GL, we believe the NRC would benefit from conducting a technical conference among all the stakeholders, including NPP licensees, the TSOs, reliability organizations, and interested state and federal agencies. The technical conference, a process used by the Federal Energy Regulatory Commission in its large generator interconnection rulemaking, could identify the critical issues and seek active involvement of the stakeholders to resolve them through appropriate guidelines such as model protocols. Such a process would be particularly useful here in view of the complexities of the issue and the fact that the NRC does not have jurisdiction over a number of entities that will be affected by the NRC's actions. In this regard, whatever communications between the NPP and the TSO are deemed necessary by the NRC will need to reconciled with FERC Standards of Conduct, which restrict the exchange of information between generators and transmission providers.

A technical conference could be designed to allow the stakeholders to develop a standardized model and a pro forma communications protocol. To that extent, the NRC would act as a catalyst in engaging the appropriate parties to develop common solutions which can then be adapted as appropriate to fit the particular circumstances of each NPP.

* * * *

We appreciate the opportunity to comment on the proposed GL and would be happy to discuss any questions the NRC may have concerning our comments.

Very truly yours,

Daniel F. Stenger

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