

December 30, 2005

MEMORANDUM TO: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons

FROM: Luis A. Reyes */RA William F. Kane Acting For/*
Executive Director for Operations

SUBJECT: STAFF RESPONSE TO SRM (SECY-05-0045) — PROGRESS ON
STAFF ASSESSMENT OF LEVEL OF COMMUNICATION BETWEEN
STATE AND LOCAL GOVERNMENTS AND DAYCARE CENTERS

The purpose of this memorandum is to provide an update on progress for certain staff actions requested in the staff requirements memorandum (SRM), dated October 26, 2005. This SRM is associated with the Commission's recent denial of the Petition for Rulemaking (PRM) 50-79, regarding emergency preparedness for children in daycare centers. The SRM directed the staff to seek further information from the Federal Emergency Management Agency (FEMA)¹ on the level of communication between State and local governments and daycare centers in the Three Mile Island (TMI) emergency planning zone (EPZ) and to consult with FEMA and other stakeholders on options, including public outreach, for further assessing the questions raised in the petition about local implementation of relevant requirements and guidance.

Background

Before an operating license for a nuclear power reactor may be issued, the U.S. Nuclear Regulatory Commission (NRC) must make a finding that the state of emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency [*§ CFR 50.47(a)(1)*]. The NRC bases its determination on whether the licensee's emergency plans for onsite response are adequate and capable of being implemented, and on a review of FEMA findings on whether the State and local emergency

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¹ FEMA is in the process of re-organization at this time. When this re-organization is complete, FEMA's Radiological Emergency Preparedness Section, Nuclear and Chemical Hazards Branch, will be separated from FEMA and will report to the Assistant Secretary for Infrastructure Protection, Department of Homeland Security. In the interest of minimizing confusion, this memorandum will use the traditional "FEMA" acronym in historical context. This re-organization will ultimately require amendments to the Commission's regulations and the NRC / FEMA Memorandum of Understanding, which the staff has initiated.

plans for offsite response are adequate and are capable of being implemented [§ 50.47(a)(2)]. Once the license is issued, the licensee must follow and maintain in effect emergency plans which meet the standards in 10 CFR 50.47(b) and the requirements in Appendix E to Part 50 [§ 50.54(q)]. If, after licensing, the NRC finds that the state of emergency preparedness does not provide reasonable assurance and if the deficiencies are not corrected within 4 months, the Commission will determine whether the reactor should be shut down or whether other enforcement action is appropriate [§ 50.54(s)(2)(ii)]. As for issuance of an operating license, NRC will base its determination on whether the licensee's emergency plans are adequate and capable of being implemented and, on a review of FEMA findings, on whether the State and local emergency plans are adequate and capable of being implemented [§ 50.54(s)(3)].

NRC and FEMA jointly prepared guidance, NUREG-0654/FEMA-REP-1, specifies that State and local authorities establish a capability to implement protective measures for the public, including people whose mobility may be impaired such as students in public and private schools, nursing and group home residents, people without transportation, and people in institutions or in confinement. FEMA GM-EV-2, "Protective Actions for School Children," provides guidance to assist Federal officials on evaluating the adequacy of State and local government offsite emergency plans and preparedness for protecting school children during a radiological emergency. GM-EV-2 is also intended for use by State and local government officials and by administrators of public and private schools—including licensed and government-supported preschools and daycare centers—in developing emergency response plans and preparedness.

GM-EV-2 provides that public and private school officials should:

- develop appropriate planning for protecting the health and safety of their students from a commercial nuclear power plant accident,
- coordinate this planning with that of the local government, and
- document, in a plan, the basis for protective action decisions, identify transportation resources, reception centers, transport routes, methods of notifying parents, and time frames for effecting the protective actions.

GM EV-2 provides that local governments should:

- identify and contact all public and private school officials within the plume exposure pathway emergency planning zone (EPZ) to ensure that these officials assume responsibility for the emergency planning and preparedness for protecting the health and safety of their students, and
- ensure that the emergency planning undertaken by these organizations is integrated within the larger offsite emergency management framework for the particular nuclear power plant site.

In the Commonwealth of Pennsylvania, K-12 public and private school administrators have developed facility-specific emergency plans consistent with the guidance of GM-EV-2. These administrators have made arrangements, which appear to be consistent with the guidance of

GM-EV-2, for transportation resources (buses and drivers), have identified reception centers (typically schools) outside the 10-mile EPZ, have trained their faculties on the planning, and periodically issue information to parents regarding the arrangements. In the Commonwealth of Pennsylvania, the staff understands from FEMA that licensed, nonprofit and for-profit daycare centers and government-supported preschools and daycare centers are on lists maintained by offsite response organizations (ORO). In an emergency, the ORO will notify the preschools and daycare centers so they can implement their emergency procedures. FEMA has also stated that unlicensed, private daycare centers and preschools are considered to be part of the general population within the 10-mile EPZ with regard to protective actions.

Although the guidance in GM-EV-2 applies to licensed daycare facilities, it appears that some of the administrators of these facilities may not have yet developed facility-specific plans. In 2004, the Commonwealth enacted a statute that requires licensed daycare center operators to develop facility-specific all-hazards emergency plans as a condition of their licenses. The statute is focused on all-hazards planning for all licensed daycare facilities across the Commonwealth. The Pennsylvania Emergency Management Agency (PEMA) mailed an all-hazards plan template to each licensed daycare facility and created a Web site with additional information.

It is important to note that FEMA found reasonable assurance that adequate protective measures could and would be implemented for the public in the EPZs of the plants within the Commonwealth of Pennsylvania before the passage of the statute. Additionally, in a letter to the petitioner in PRM-50-79 dated October 6, 2004, FEMA reaffirmed that "FEMA's requirements and guidance, along with established Pennsylvania and local government radiological emergency plans, provide FEMA with continued reasonable assurance that procedures are in place in Pennsylvania to adequately protect all members of the public, including children in daycare centers and nursery schools, in the event of an incident at any of Pennsylvania's nuclear power plants." In May 2005, FEMA evaluated the capabilities of OROs, including whether their plans and procedures comply with the protocols in GM-EV-2. The exercise evaluators did not identify any deficiencies, areas requiring corrective action, or planning issues related to daycare preparedness. Based on the results of the exercise and the plan reviews, FEMA found that State and local emergency plans can and will be implemented and are adequate to provide reasonable assurance that adequate measures can and will be taken to protect the public health and safety in the event of a radiological emergency at the TMI site.

PRM 50-79 Status:

On September 23, 2002, a stakeholder filed a petition for rulemaking requesting that the NRC amend its regulations for offsite State and local government emergency plans for nuclear power plants to ensure that all daycare centers and nursery schools in the vicinity of nuclear power plants will be properly protected in the event of a radiological emergency. The staff reviewed the petition and determined that the current NRC requirements and NRC and FEMA guidance were adequate although there may be questions about the local implementation of relevant requirements and guidelines. Because this issue is related to offsite preparedness, the staff solicited support from FEMA in keeping with the NRC / FEMA Memorandum of Understanding. FEMA stated that it continued to have reasonable assurance that adequate protective measures could and would be taken in the event of a radiological emergency.

In SECY-05-0045, the staff forwarded a recommendation to the Commission to deny the petition. By an SRM dated October 26, 2005, the Commission approved the staff's recommendation and directed the staff to further assess the petitioner's questions about local implementation of requirements and guidance for emergency preparedness at daycare centers and nursery schools in the TMI EPZ. The staff mailed the petition denial to the petitioner on December 13, 2005, and conducted courtesy notifications of the petitioner, DHS, the Commonwealth of Pennsylvania, and the staff of Congressman Platts.

Discussion

On November 4 and 14, 2005, the staff and its counterparts in DHS discussed potential actions to resolve certain stakeholder concerns regarding emergency preparedness for daycare facilities in the EPZs of the nuclear power plants in the Commonwealth of Pennsylvania. A meeting with the NRC, DHS, PEMA, Pennsylvania Department of Welfare (DPW) and Department of Education, to discuss daycare and nursery school planning and preparedness within the Commonwealth has been scheduled for January 26, 2006, at PEMA Headquarters, in Harrisburg. The staff's objective in requesting this meeting was to identify opportunities for improving the preparedness for the daycare segment of the population and to determine their actions in the event of a radiological emergency.

In addition, Exelon's Emergency Preparedness organization, in cooperation with the Emergency Management Agencies (EMAs) of the counties within the EPZs, will be hosting an emergency planning training seminar on February 4 and 25, 2006, for the TMI and Limerick plants, respectively. Representatives from the Pennsylvania DPW, PEMA, and appropriate county EMAs will attend. The seminar invitation to the daycare facility operators references the requirements of licensed daycare facilities in the Commonwealth to develop emergency plans. The seminar presents an opportunity to have planning questions answered for those developing, or interested in improving, daycare facility-specific emergency plans. Exelon anticipates providing a similar opportunity for daycare facilities within the Peach Bottom 10-mile EPZ.

The staff is meeting with its counterparts in DHS for the quarterly NRC / FEMA Steering Committee on January 23, 2006. The actions identified in the October 26, 2005, SRM, including potential options of public outreach and a survey, will be on the agenda for this meeting. A standing subcommittee, created to revise the existing NRC / FEMA Memorandum of Understanding, will meet in early February. The staff will provide another status report to the Commission by February 28, 2006. This status report will further address the outcomes of NRC / DHS discussions on these issues.

The staff is also pursuing a meeting between Mr. Roy Zimmerman, Director, Office of Nuclear Security and Incident Response, and Mr. Robert Stephan, the DHS Assistant Secretary for Infrastructure Protection, to discuss issues of mutual interest, including the issues discussed in the SRM.

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