

October 23, 2006

MEMORANDUM TO: Sher Bahdur, Chairman
Committee to Review Generic Requirements

FROM: Michael Weber, Deputy Director */RA/*
Office of Nuclear Reactor Regulation

SUBJECT: REQUEST CRGR REVIEW OF DRAFT FINAL RULE TO
REVISE SECTION 10 CFR 73.1 DESIGN BASIS THREAT (DBT)
REQUIREMENTS

The Office of Nuclear Reactor Regulation (NRR) is requesting that the Committee to Review Generic Requirements (CRGR) review the attached draft final rulemaking package for § 73.1.

The final rule makes generically applicable the security requirements previously imposed by the Commission's April 29, 2003 Orders and other post 9-11 orders, which applied to existing licensees, and redefines in the regulations, the security requirements necessary to ensure that the public health and safety and common defense and security are adequately protected. Specific details related to the design basis threats (DBTs), which include both safeguards and classified information, are described in the adversary characteristics documents (ACDs) consistent with the requirements in the April 29 Orders. The rule revises the DBT requirements for both radiological sabotage (i.e. requirements which power reactors and certain fuel facilities must defend against) and theft or diversion (i.e. requirements which Category I fuel cycle facilities must defend against). The final rule includes an additional element, namely a cyber threat, that was not included in the proposed rule (70 FRN 67380; November 7, 2005). It should be noted that this additional element of the DBT is in alignment with the Interim Compensatory Measures of 2002 (ICM). The final rule will also satisfy the Commission's statutory obligation under Section 651 of the Energy Policy Act 2005 to initiate and complete a rulemaking revising the DBT, considering the 12 factors specified in Act. Additionally, a Petition for Rulemaking (PRM-73-12), filed by the Committee to Bridge the Gap, was considered as part of this rulemaking and the NRC's disposition is contained in this document.

In support of CRGR review, we note that the NRC staff has determined, pursuant to the exception in 10 CFR 50.109(a)(4)(iii) and 10 CFR 70.76(a)(4)(iv), that a backfit analysis is unnecessary for this final DBT rule, even with the inclusion of a new cyber threat in the DBT rule that was not included in the proposed rule. Section 50.109 and § 70.76 states in pertinent part that a backfit analysis is not required if the Commission finds and declares with appropriate documented evaluation for its finding that a "regulatory action involves defining or redefining

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what level of protection to the public health and safety or common defense and security should be regarded as adequate.” Further elaboration of the Backfit analysis is provided in the attached FRN, Section XVI. Also, this rulemaking does not impose any additional burden on affected licensees since these requirements are consistent with the April 29, 2003 Orders, and ICM Orders, and the affected licensees are in full compliance with those requirements.

cc: L. Cupidon

Enclosures:

1. Commission Paper (ML062130442)
2. Federal Register Notice (ML062130301)
3. Regulatory Analysis (ML062130546)
4. Environmental Assessment (ML062130553)
5. Summary of Public Comments (ML062130575)
6. Appendix C of CRGR (ML062960185)

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ADAMS Accession No.: ML062960178

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