

NRCREP - Progress Energy Comments on DG-5019, "Reporting of Safeguards Events," 72 FR 37058 (July 6, 2007)

From: "Miller, David (Bryan)" <David.Miller@pgnmail.com>  
To: <NRCREP@nrc.gov>  
Date: 09/04/2007 4:58 PM  
Subject: Progress Energy Comments on DG-5019, "Reporting of Safeguards Events," 72 FR 37058 (July 6, 2007)

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The attached electronic file contains the Progress Energy comments on the subject draft Regulatory Guide. A hard copy of these comments will be sent via US Mail to the Rulemaking, Directives, and Editing Branch, Office of Administration, US NRC, Washington, DC 20555-0001.

D. Bryan Miller  
Corp. Regulatory Affairs  
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919-546-5243

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Rulemaking, Directives, and Editing Branch  
Office of Administration  
United States Nuclear Regulatory Commission  
Washington, DC 20555-0001

**SUBJECT:** Comments on Draft Regulatory Guide DG-5019, "Reporting of Safeguards Events," 72 FR 37058 (July 6, 2007)

Ladies and Gentlemen:

Progress Energy is pleased to submit comments on the subject draft Regulatory Guide. Progress Energy has worked closely with the Nuclear Energy Institute (NEI) Security Rulemaking Task Force to review and comment on the draft Regulatory Guide. Progress Energy personnel also actively participated in the NRC's DG-5019 workshop on July 26, 2007. Based on our review of the proposed rule, Progress Energy endorses the comments submitted by NEI on behalf of the nuclear industry via NEI's letter dated September 4, 2007.

During the March 9, 2007, public workshop regarding the Part 73 rule change, the industry commented that the proposed rule language was ambiguous and imprecise and could be broadly interpreted. In response, the NRC staff indicated that the upcoming associated Regulatory Guides would address this comment. Based on our review, it does not appear that the language in the draft Regulatory Guide addresses this industry comment. Progress Energy has concluded that the language in the draft Regulatory Guide could promote regulatory instability in the safeguards reporting arena due to its broad and all encompassing language. Numerous examples of language that could be broadly interpreted are documented in the NEI comment letter. This language must be revised to minimize misinterpretations and prevent the unintentional introduction of new and expanded requirements. Such language would also likely introduce confusion and instability into the inspection process and tie up licensee and NRC resources in avoidable controversy about what was intended. While it is evident that considerable staff work went into drafting the Regulatory Guide, it is equally evident that more work is required.

Additionally, the draft Regulatory Guide contains guidance that is not directly supported by the proposed 10 CFR 73.71 rule language. For example, the guidance in Section 3.2(2) that the "discovery of contraband material outside the protected area or inside a designated vehicle barrier or control point that does not constitute a threat or potential threat to the facility" be recorded in the security log is not supported by the proposed rule language. A Regulatory Guide should not be used to impose new requirements that are beyond what is required by the regulation. It is requested that this example and others like it be removed from the Regulatory Guide.

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We look forward to working through the NEI Security Rulemaking Task Force to resolve comments and achieve a sound rule.

Please contact me at (919) 546-4579 if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Brian McCabe". The signature is written in a cursive style with a large, prominent "B" and "M".

Brian McCabe  
Supervisor - Regulatory Affairs

DBM