

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
OFFICE OF NUCLEAR REACTOR REGULATION  
WASHINGTON, DC 20555-0001

October 29, 2008

**NRC REGULATORY ISSUE SUMMARY 2008-26  
CLARIFIED REQUIREMENTS OF TITLE 10 OF THE CODE OF FEDERAL  
REGULATIONS (10 CFR) SECTION 50.54(Y) WHEN IMPLEMENTING 10 CFR  
SECTION 50.54(X) TO DEPART FROM A LICENSE CONDITION OR TECHNICAL  
SPECIFICATION**

**ADDRESSEES**

All holders of operating licenses for nuclear power reactors, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel.

**INTENT**

The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) to clarify the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.54(y) when licensees implement 10 CFR Section 50.54(x) to depart from a license condition or technical specification in an emergency. This RIS requires no action or written response on the part of the addressees.

**BACKGROUND**

Section 50.54(y) states, "Licensee actions permitted by paragraph (x) of this section shall be approved, as a minimum, by a licensed senior operator..." This describes the lowest ranking individual authorized to approve the departure from a license condition or technical specification. An individual other than a licensed senior operator could make such a decision, as long as the person is in a position of authority greater than the licensed senior operator. The Statements of Consideration (SOC) that accompanied the final rule for "10 CFR Part 50, Applicability of License; Conditions and Technical Specifications in an Emergency," in 48 FR 13966, April 1, 1983, stated that the decision to depart from the license could be made by any licensed senior operator for the unit involved. However, in an emergency, that decision would pass to more senior licensee personnel, if available, as higher authorities in the chain of command. That interpretation was reiterated by Mr. John A. Zwolinski, Director, BWR Project Directorate #1, to Consumers Power Company in a November 5, 1986 letter with the subject, "Consumers Power Company (CPC) Request for Interpretation of 10 CFR 50.54(y)."

In 2004, the staff approved Nuclear Energy Institute (NEI) 03-12, "Template for the Security Plan, Training and Qualification Plan, Safeguards Contingency Plan," which licensees used as a template for making security plan changes. Some industry personnel questioned whether this

**ML080590124**

document was contrary to the staff's earlier position, in that the template required the highest ranking licensee official (e.g., Emergency Director (ED)) to receive approval from a licensed senior operator to depart from the license.

## **DISCUSSION**

Section 50.54(y) of 10 CFR does not require that the decision to depart from the license or technical specifications be made only by a licensed senior operator or that the individual making the decision possess a senior operator's license. Rather, such a decision could be made either by any licensed senior operator or any individual in a superior position to a licensed senior operator. As stated in the SOC, if "more senior licensee personnel" are available, "the decision to depart from the license in an emergency would pass to them (as higher authorities in the chain of command)." There is nothing in the rule to indicate that the "more senior licensee personnel" are also required to be licensed senior operators. In addition, there is nothing in the rule that would require the "more senior licensee personnel" to obtain the concurrence of a licensed senior operator to make such a decision, and the SOC does not contain any discussion suggesting such Commission intent.

With respect to the language in the NEI template, which states that the departure decision would be made by the ED, with approval, at a minimum, from a licensed senior reactor operator, the NRC notes that the NEI template is not an NRC interpretation of its regulations. This template, once approved, described one way to comply with NRC requirements. A licensee is free to utilize other approaches which comply with the requirements of the regulation as interpreted and applied by the Commission. Also, the fact that the NRC has approved a document that seems to employ more stringent measures (e.g., both the ED and senior reactor operator must concur on the departure) does not mean that less stringent measures would be insufficient in order to comply with the regulations. Each individual licensee is free to determine whether or not it wants to employ such a concurrence process.

## **SUMMARY OF ISSUE**

The decision to depart from the license or a technical specification in an emergency shall be approved, as a minimum, by a licensed senior operator. If more senior licensee personnel are available, the decision to depart from the license in an emergency would pass to them as higher authorities in the chain of command. The rule does not specify that the senior licensee personnel be licensed senior operators or that they obtain the concurrence of a licensed senior operator to make such a decision.

## **BACKFIT DISCUSSION**

This RIS does not represent a new or different staff position regarding the implementation of 10 CFR 50.54(x) and is consistent with the SOC for 10 CFR 50.54(x) and (y), and the staff guidance in the November, 1986 Zwolinski letter. It requires no action or written response. Any action by addressees to implement changes to their security or emergency plans, or procedures in accordance with the guidance in this RIS is strictly voluntary and therefore, is not a backfit under 10 CFR 50.109, "Backfitting." Consequently, the NRC staff did not perform a backfit analysis.

## **FEDERAL REGISTER NOTIFICATION**

A notice of opportunity for public comment on this RIS was published in the *Federal Register* (73 FR 47853) on August 15, 2008 for a 60-day comment period. That period closed on October 14, 2008, and no comments were received.

## **CONGRESSIONAL REVIEW ACT**

This RIS is not a rule as designated by the Congressional Review Act (5 U.S.C. §§ 801-886) and therefore, is not subject to the Act.

## **PAPERWORK REDUCTION ACT STATEMENT**

This RIS does not contain any information collections and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

## **PUBLIC PROTECTION NOTIFICATION**

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

## **CONTACT**

Please direct any questions about this matter to the technical contact listed below.

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**Distribution:** RIS File  
**Accession No.:** ML 080590124

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