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RECEIVED

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Office of Administration  
Mail Stop: TWB-05-B01M  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Subject: Docket ID NRC-2009-0365  
Duke Energy Carolinas, LLC (Duke Energy) Comments on Proposed Generic  
Communication; NRC Regulatory Issue Summary 2005-02, Revision 1, Clarifying  
the Process for Making Emergency Plan Changes

Duke Energy has reviewed the Federal Register notice published on August 24, 2009,  
(74 FR 42699) concerning clarification of the process for making Emergency Plan changes.  
Duke Energy is offering the attached specific comments.

Duke Energy appreciates being given an opportunity to comment on these matters and  
endorses the comments submitted by the Nuclear Energy Institute. If you have any questions,  
please contact Tina Kuhr at 704-382-3151.

Sincerely,

*John W. Pitesa*  
John W. Pitesa

Attachment

8/24/09  
FR 42699  
7

E-RIDS = ADM-03  
add: Don Johnson (daj3)

SUNSI Review Complete  
Template = ADM-013

**Duke Energy Comments on Proposed Generic Communications  
NRC Regulatory Issue Summary 2005-02, Revision 1  
Docket ID NRC 2009-0365  
Clarifying the Process for Making Emergency Plan Changes  
Federal Register Notice of August 24, 2009 (74 FR 42699)**

**1) The draft RIS is "de facto" rulemaking**

**Page 1 of 11, "Intent":**

The draft RIS says "The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) revision to inform stakeholders that reactor emergency plan changes that require prior NRC approval, in accordance with 10 CFR 50.54(q), will need to be submitted as license amendment requests in accordance with 10 CFR 50.90, 'Application for Amendment of License, Construction permit, or Early Site Permit.'" It also states, "In addition, the NRC staff clarifies herein that the license amendment process is the correct process to use when reviewing decrease (reduction) in effectiveness submittals." This RIS is NOT a clarification. This RIS is in effect changing the rule outside of the rulemaking process, as it is in direct conflict with the wording of the existing rule (emphasis added).

q) A holder of a nuclear power reactor operating license under this part, or a combined license under part 52 of this chapter after the Commission makes the finding under § 52.103(g) of this chapter, shall follow and maintain in effect emergency plans which meet the standards in § 50.47(b) and the requirements in appendix E of this part. A licensee authorized to possess and/or operate a research reactor or a fuel facility shall follow and maintain in effect emergency plans which meet the requirements in appendix E to this part. The licensee shall retain the emergency plan and each change that decreases the effectiveness of the plan as a record until the Commission terminates the license for the nuclear power reactor. The nuclear power reactor licensee may make changes to these plans without Commission approval only if the changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of § 50.47(b) and the requirements of appendix E to this part. The research reactor and/or the fuel facility licensee may make changes to these plans without Commission approval only if these changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the requirements of appendix E to this part. This nuclear power reactor, research reactor, or fuel facility licensee shall retain a record of each change to the emergency plan made without prior Commission approval for a period of 3 years from the date of the change. Proposed changes that decrease the effectiveness of the approved emergency plans may not be implemented without application to and approval by the Commission. The licensee shall submit, as specified in § 50.4, a report of each proposed change for approval. If a change is made without approval, the licensee shall submit, as specified in § 50.4, a report of each change within 30 days after the change is made.

The proposed rulemaking *Federal Register* notice published May 18, 2009 (74 FR 23266) states, "The NRC also considered other options for addressing the § 50.54(q) problems. Using a voluntary industry initiative was rejected because the NRC and NEI have yet to agree on the best approach to resolve the problems. Issuing more regulatory guidance was rejected because that approach has been tried but has not resolved the problems." This Draft RIS is another example of issuing more regulatory guidance. The FR notice (page 23266) further

states, "The NRC believes that an amendment to the regulations, supplemented as necessary by regulatory guidance, would be the best course of action and would ensure that (1) the effectiveness of the emergency plans would be maintained, (2) changes to the approved emergency plan would be properly evaluated, and (3) any change that reduces the effectiveness of the plan would be reviewed by the NRC prior to implementation." The NRC has not demonstrated a need to change the requirements in advance of the proposed rulemaking.

## **2) A RIS is not the appropriate communication vehicle**

### **Page 2 of 11, "Intent":**

The Regulatory Issue Summary states, "This RIS revision requires no action or written response on the part of the addressees." On the contrary, it imposes new requirements on licensees. The NRC web site states, "By a generic letter, the NRC may also provide the addressees (1) staff technical or policy positions not previously communicated or broadly understood..." and appears to be a more appropriate communication tool if a licensee response is needed. When the NRC clarified the process for making Security Plan changes under 10 CFR 50.54(p) in 1995, the staff did so by means of a generic letter (GL 95-08).

## **3) Request to Submit 10 CFR 50.54(q) evaluations under § 50.4**

### **Page 4 of 11, "Summary of Issue":**

Another issue is that the Draft RIS recommends that licensees include the applicable licensee evaluation and justification for the change as part of the report submitted under § 50.4 for changes made without prior NRC approval under 10 CFR 50.54(q). This is not an expectation for similar security plan changes made under § 50.54(p). Current practice in NRC Region 2 is to review these evaluations on site during inspection.

## **4) Process for submitting some EAL changes is not clear**

### **Page 9 of 11, "Related Topics Regarding Emergency Plan Changes," Item 2, "Emergency Action Level Changes":**

The process for submitting an EAL change to incorporate the improvements provided in NUMARC/NESP-007 or NEI 99-01 is not clear. The draft RIS states, "A change in an EAL scheme to incorporate the improvements provided in NUMARC/NESP-007 or NEI 99-01 would not decrease the overall effectiveness of the emergency plan and would not expand a licensee's operating authority beyond that previously authorized by NRC, but due to the potential safety significance of the change, the change needs prior NRC review and approval. This approval is given via SE and letter." However, it does not specify the process for submitting the change (i.e., as a report under 10 CFR 50.4).

## **5) Providing an example 10 CFR 50.54(q) procedure not necessary**

### **Attachment 1:**

Providing the flow chart outlining the 10 CFR 50.54(q) evaluation process is appropriate, but including a detailed procedure is not. This would be better developed using an industry consensus process, such as that used for the NRC Performance Indicators (NEI 99-02).