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Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

GL09-047

ATTN: Rulemakings and Adjudications Staff

**COMMENTS ON NRC PROPOSED RULE, "ENHANCEMENTS TO
EMERGENCY PREPAREDNESS REGULATIONS"**
74 FEDERAL REGISTER 23,254 (MAY 18, 2009)
DOCKET ID NRC-2008-0122

On May 18, 2009, the U.S. Nuclear Regulatory Commission (NRC) published a proposed rule amending its emergency planning and preparedness regulations in 10 CFR Part 50. See 74 Fed. Reg. 23,254; May 18, 2009. In addition, both NRC and the Federal Emergency Management Agency (FEMA) published related guidance for public comment on the same date. See 74 Fed. Reg. 23,219, 23,220, 23,221, 23,198.

This rulemaking proposes the most significant amendment of NRC Emergency Planning and Preparedness requirements in nearly thirty years. On October 19, 2009, the Nuclear Energy Institute (NEI) submitted comments on behalf of the industry (Project Number: 689). Dominion concurs with these comments and offers the following supplementary input for NRC consideration.

In the aggregate, several of the proposed rule elements have the potential to adversely affect offsite relationships by requiring licensees to perform roles previously performed by the Federal Emergency Management Agency (FEMA). These role changes include:

- Making the licensee responsible for ensuring the backfilling of offsite response organization (ORO) functions: The corresponding interim staff guidance supporting the rule alludes to the ineffectiveness of mutual aid agreements in the post 9/11 environment and thus the rule could be viewed as requiring direct proof that OROs can and will perform various offsite functions, e.g., traffic control in the 10 mile EPZ when the event is hostile action. This would place the licensee in a role that has historically been that of offsite authorities and FEMA. It could also lead to an expansion of the geographical area where agreements may be required, i.e., outside the 10-mile plume exposure pathway emergency planning zone.
- Making the licensee responsible for ensuring a backup means for alert and notification exists: FEMA presently approves these alert and notification systems under provisions of Title 44 Code of Federal Regulations, Part 350.

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- Making the licensee submit exercise scenarios to the NRC for approval: Exercise scenarios are presently provided to FEMA for review and approval through the affected state. Scenario adjustments are sometimes needed to resolve FEMA comments. Provisions are needed to address coordination of the reviews by NRC and FEMA early in the scenario development process, including the extent of participation agreements required by FEMA. Licensees should not be placed in the position of dictating offsite participation scope based on NRC review comments, e.g., demonstration of backup alert and notification methods.
- Making the licensee perform a hostile action based exercise during offsite participation exercises: It is uncertain at this time whether FEMA has agreed that this kind of exercise will suffice to demonstrate reasonable assurance, since a hostile-action scenario may not include events needed to allow offsite agencies to demonstrate their FEMA objectives.

Dominion recommends that a clear delineation of responsibilities between the NRC and FEMA be maintained, which correspond to licensee and offsite organization responsibilities, respectively. Interagency agreements need to be worked out between the NRC and FEMA and associated changes made to this proposed rule, before the rule is reissued for public comment.

In the Federal Register notice, the NRC asked whether regulations should be issued requiring licensees to train responders and implement the Incident Command System (ICS) to improve interface with offsite response organizations. While such training would be beneficial, a more appropriate approach would be to add references to the National Incident Management System (NIMS) and the Incident Command System (ICS) in NUREG-0654/FEMA-REP-1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants" Section II.O, Radiological Emergency Response Training. Consideration of NIMS and ICS in ERO structure may also be beneficial.

NRC also asked for comments on how combined operating license (COL) and early site permit (ESP) applicants would implement this rule as proposed, including any impacts to the process and schedule for applicant submission or NRC to review. Dominion considers that applications should be considered based on the regulations in effect at the time of submittal. If an application is submitted before the proposed rules go into effect, then compliance should be controlled as specified by COL license condition, which should include a schedule with licensee obligation for conformance by an identified, future date(s). After the license is issued it would become the licensee's responsibility to come into compliance with the new regulation consistent with the schedule specified in the license condition. Furthermore, some provisions of the proposed rule are not expected to apply when the COL is first issued, e.g., it is expected that passive-design emergency action levels (EALs) for hostile action events would not be required to be submitted until 180 days prior to expected fuel load. Likewise, an ESP holder, should not be expected to modify or otherwise address their permit for this or any other new rule until the ESP is invoked and the COL process is begun.

In addition, NRC requested comments regarding the appropriateness of the proposed implementation schedule. Dominion concurs with NEI's position in this regard.

Rule-element specific comments are as follows:

On-shift Multiple Responsibilities

The proposed rule provides insufficient information to fully assess its potential implications. Absent specific definition of these functions and the competencies necessary to satisfy their performance, the proposed rule merely outlines an ambiguous standard. In concept, requiring a detailed analysis to show that on-shift personnel assigned emergency plan implementation functions are not assigned any other responsibilities that would prevent them from performing their assigned emergency plan functions when needed is reasonable and appropriate. However, rather than establish a rule to require such an analysis and then subsequently define how to meet the rule, action on the proposed rule should be deferred until it is clear how compliance with the rule could be demonstrated. A well-defined set of standard circumstances for a response evaluation would provide for uniform and repeatable analysis of staffing needs and will be better than prescribing fixed staffing levels.

NRC requested comment regarding whether current regulations should be more explicit regarding the number of emergency response organization (ERO) staff that are necessary for nuclear power plant emergencies and whether that number should be included with the proposed rule in a table outlining specific positions and staffing levels within prescribed times. Dominion considers that specifying prescribed staffing levels in the regulation will tend to exclude alternative methods that might be available to a licensee through technology or plant design for responding to emergencies. This would be most prevalent in new generation facilities that have passive features that preclude the need for added operational staff. Specifying staffing levels in regulation is rigid, would provide no added benefit for the new generation of plants and most likely would result in unnecessarily increasing minimum staff.

Emergency Action Levels for Hostile Action Events

The proposed rule is unnecessary as processes are already in-place to assure the existence of emergency action levels (EALs) for hostile action events and address the issue of anticipatory response to hostile action events. The suggestion that there is no requirement to maintain the credible threat EAL required by EA-02-026 and the EAL enhancements specified in Bulletin 05-02 seems to ignore the requirements of 10 CFR 50.54(q), which are discussed elsewhere in the proposed rulemaking. Also, the proposed rule unnecessarily separates out hostile action as a special category of events. This detail is not needed because the current regulations contain provisions for having EAL schemes, and the EAL schemes in use and contemplated all contain initiating conditions for hostile action event, other hazards to station operation, abnormal radiological events, system malfunctions and fission product barrier breaches.

Emergency Response Organization (“ERO”) Augmentation and Alternative Facilities

The proposed rule is unnecessary as EA-02-026 required licensees to assess the adequacy of staffing plans at emergency response facilities during hostile action events assuming the unavailability of the on-site technical support center (TSC), and identify alternative facilities capable of supporting event response. Rather than codify existing requirements, the proposed 10 CFR 50 Appendix E Section 4.E.8.d, seeks to require efforts (i.e., facilities and functions) beyond the enhancements specified in Bulletin 05-02. The NRC has inspected licensees against commitments made in response to EA-02-026 and each licensee's actions taken in response to Bulletin 05-02 have been closed. Dominion has completed hostile action based drill commitments made in response to Bulletin 05-02 at its stations, critiqued performance and addressed the results. We do not consider that codification is called for or necessary.

Licensee Coordination with Offsite Response Organizations During Hostile Action Events

The proposed rule is unnecessary as current regulations already require commercial nuclear licensees to establish specific emergency responsibilities of the various supporting organizations, to specify interface with offsite support and response activities, and to make arrangements for using assistance resources (reference 10 CFR 50.47(b)(1), (2) and (3)). In its discussions of alternatives considered, NRC did not explore adding applicable evaluation criteria to NUREG-0654/FEMA-REP-1 Section II.A, II.B and/or II.C to address meeting these planning standards. The proposed rule provides insufficient information to assess its direct impact and potential implications. This proposed rule directly impacts the historical delineation of responsibilities belonging to the NRC and FEMA without apparent consideration to the licensee interface with both agencies. This responsibility properly rests with the US Department of Homeland Security (DHS) and its subordinate agency: FEMA. Efforts in this regard should be integrated across all critical infrastructures by DHS. Most importantly, the National Incident Management System (NIMS) is designed “to mitigate the effects of incidents, regardless of cause, size, location, or complexity.” The Incident Command System (ICS) provides a methodology to provide needed support, even without the intervention of the licensee.

We echo NEI's concerns about use of the term “hostile action” in this context. The definition of a hostile action is too broad and ambiguous, and without bounds. Without a well-defined and reasonably bounding definition of hostile action, licensees will find it difficult to ensure themselves of compliance with the new regulations and not subject to a myriad of differing interpretations by NRC inspectors. Without a more workable definition of hostile action, it will be near impossible to identify what ORO resources would even be necessary to respond to a hostile action, let alone ensure those resources. Contrary to A.7 in Section IV of Appendix E, nuclear plant licensees cannot ensure that ORO resources are available to respond to an emergency including a hostile action event. We can work with OROs to identify expected resources, but cannot ensure their availability.

Protection for Onsite Personnel

The proposed rule is unnecessary as current regulations already require commercial nuclear licensees to develop a range of protective actions for emergency workers and the public (reference 10 CFR 50.47(b)(10)). In its discussions of alternatives considered, NRC did not explore adding applicable evaluation criteria to NUREG-0654/FEMA-REP-1 Section II.J to address meeting the planning standard. In addition, although narrowly written as applicable following notification of a potential aircraft threat, 10 CFR 50.54(hh)(1) contains provisions for contacting and dispersing onsite personnel, as a condition of license.

The above comments concerning use of the term "hostile action" with respect to licensee coordination with OROs applies to the proposed provision for protection for onsite personnel.

Challenging Drills and Exercises

The proposed rule contains some positive elements that can reasonably be expected to enhance drills and exercises, and consequently emergency response capabilities, but generally these are elements that do not belong in regulation. Historically, such specific criteria have been relegated to guidance documents, e.g., NUREG-0654/FEMA-REP-1 or in an NRC-endorsed industry standard. Some of the specific elements undermine the stated goal of reducing preconditioning by establishing regulatory-required frequencies for specific elements. The proposed new requirement for licensees to submit full participation exercise scenarios for NRC review and approval (10 CFR 50 Appendix E Section 4.F.2.a) would constitute a significant regulatory burden. Provisions are needed to address coordination of the reviews by NRC and FEMA, including the extent of participation agreements developed early in the scenario development process. Licensees should not be placed in the position of dictating offsite participation scope based on NRC review comments, e.g., demonstration of backup alert and notification methods.

Backup Means for Alert and Notification Systems

The proposed rule is premature and would significantly impact the historical delineation of responsibilities belonging to NRC and FEMA. An NRC rule establishing a separate and unequal requirement for alert and notification systems in communities surrounding commercial nuclear stations fails to consider and integrate FEMA's efforts to provide common functionality for other segments of the nation's critical infrastructure and communities, and areas subject to environmental hazards.

Emergency Declaration Timeliness

The proposed rule is unnecessary as current regulations already require commercial nuclear licensees to classify events promptly. Furthermore, enforcement of this standard is evidenced by several NRC violations. In addition, the proposed provision to require that the licensee "shall promptly declare the emergency condition as soon as possible following a determination that an emergency action level has been

exceeded" suggests that a transient event or one discovered after the fact must be declared. This is contrary to existing 10CFR50.72 non-emergency reporting guidance. As a minimum, the proposed language should be revised to make it clear that any emergency declaration time requirement pertains to real events only. That is, not meeting a declaration time standard in an exercise or drill is not a regulatory non-compliance. Such missed opportunities during drills and exercises are adequately addressed by the reactor oversight program, and corrective actions are taken by licensee in accordance with their corrective action programs.

Emergency Operations Facility ("EOF") Performance-Based Approach

The proposed rule represents an appropriate recognition of the present regulatory position and constraints regarding the exercise of this provision. However, the NRC noted that several nuclear power plant licensees have submitted requests for NRC approval to combine EOFs for plants they operate. The "grandfather" provisions for existing EOFs should remain intact.

Evacuation Time Estimate Updating

The proposed rule presupposes that a set of criteria can be applied in a wide variety of situations, small or large population, small or large Emergency Response Plan Areas (ERPAs), etc. Also, since ERPAs may not be delineated by jurisdictional boundaries in all cases, the term should be defined in regulation to ensure an unambiguous interpretation of its use (if it is continued to be used). The means of determining whether population changes of greater or less than 10 percent has taken place essentially necessitates a re-performance of a study. Further rationale and method needs to be defined before such a rule should be implemented. Site-specific sensitivity criteria based on infrastructure capacity, perhaps as part of the study might be appropriate. Alternatively, plants could be categorized based on their population, its distribution, road network, etc. The key point is that one size does not fit all situations.

Amended Emergency Plan Change Process

The proposed rule and the associated implementation guidance provided in Draft Regulatory Guide DG-1237 greatly expand the restrictions on a licensee's authority. The guidance includes not only changes in emergency plans and emergency plan implementing procedures that address the planning standards but provides some examples of items "requiring prior approval" to actions that implement the standards. Some of the examples remove a licensee's ability to manage their business environment with OROs (e.g., NRC review/approval of changes in operation of a volunteer fire department which might affect effectiveness). An alternative to the site-specific emergency plan effectiveness threshold (i.e., no margin allowed) should be considered. Specific criteria and standards should be established that require prior NRC approval and any other provision should rest solely within the licensee's purview. Finally, the provisions of Draft Regulatory Guide DG-1237 Section 5.4 suggesting all emergency plan change documentation be saved to show the historical progression of changes are inconsistent with the retention period prescribed by regulation (current and proposed). The regulation provides a finite time period during which licensees are

required to maintain these records. This records retention period, coupled with the periodic inspection cycle, allows NRC ample opportunity to review these changes. The referenced suggestion in DG-1237 Section 5.4 should be deleted and NRC's role during the 3-year records retention period should be described.

Removal of Completed One-Time Requirements

We concur with the proposed elimination of several regulatory provisions that required holders of licenses to take certain one-time actions.

Also, please note that the first sentence in Appendix E Section IV Part F.2 (iii) should be revised from "For a combined licensee issued..." to "For a combined license issued..."

If you have any questions, please contact:

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Respectfully,



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