4/27/2011
76FR23513

712 North Carolina Avenue, SE
Washington, DC 20003

Decommissioning Plant Coalition
DPC

Phone: 202.546.4258
Email: dpc@govstrat.com

1

Mr. Phil Brochman
Office of Nuclear Security and Incident Response
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

October 13, 2011

Re: Draft Regulatory Guide DG 5033, Security Performance (Adversary) Characteristics for Physical Security Programs for 10 CFR Part 72 Licensees

Dear Mr. Brockman;

The Decommissioning Plant Coalition (DPC) is providing comments on Draft Regulatory Guide DG 5033, "Security Performance (Adversary) Characteristics for Physical Security Programs for 10 CFR Part 72 Licensees." We have serious concerns regarding the scope of the regulatory bases and changes in DG 5033 and associated impacts upon implementation on stand alone Independent Spent Fuel Storage Installations (ISFSIs) licensed under 10 CFR Part 50 and Part 72.

The Decommissioning Plant Coalition was established in 2001 to highlight issues unique to single-unit nuclear power plants that have undergone or are undergoing decommissioning. Members and participants of the Decommissioning Plant Coalition include the Connecticut Yankee (CT), LaCrosse (WI), Maine Yankee (ME), Rancho Seco (CA), Yankee Rowe (MA), and Big Rock (MI) facilities.

The DPC ISFSIs remain in compliance with current NRC security regulations applicable to ISFSI's and will continue to be kept safe and secure in accordance with applicable NRC requirements.

DPC Comments on the Impacts of the Draft Guidance

The Draft Guide contains detailed performance characteristics that describe the explosives, weaponry, tactics, techniques, and procedures that individuals and groups with malevolent intent could be expected to employ in an assault against an ISFSI or MRS. The issuance of this regulatory guidance is considered by the staff as providing ISFSI and MRS licensees with the necessary technical content on security performance

SUNSI Review Complete
Template = ADM-013

E-RIDS = ADM-03
Add = D. Andrukate (DWA2)

characteristics needed to design, develop, and implement physical protection programs and systems for such facilities under the NRC's regulations in 10 CFR Part 73, "Physical Protection of Plants and Materials." The scope of performance characteristics changed in this regulatory guidance is especially significant to single unit shutdown reactor ISFSI sites.

In proposing these guidance changes, the NRC will depart in a major way from the historical security regulatory basis and resulting security event emergency planning requirements that has marked the regulatory licensing basis for permanently shut down plant ISFSI's since the first of these announced that it would cease operations and decommission the site. In fact, as recently as August 2, 2010, the NRC staff notified our sites that there were, "no security or health and safety gaps," at our sites and that our standard exemptions from the security requirements applicable to operating plants would continued to be considered as appropriate.[1]

The DPC is concerned that:

- DG 5033 is the initial step in dismantling a risk-based approach to regulating permanently shutdown sites that has served all well. Until issuing DG 5033, NRC had approached our security posture as one where we would provide protection as appropriate based on a site-specific risk-based analysis. Adopting DG 5033 derails that approach and presumes a denial strategy is required at any and all sites.

- The outreach to industry stakeholders needs additional and specific focus on the permanently shut-down plants, which will face along with their local and state governmental stakeholders massive resource and societal impacts that would be associated with the implementation of the draft regulatory guidance. This is especially critical since DPC fuel managers have for years not been cleared for or invited to be part of classified briefings pertaining to operating plants. This has left the DPC sites at a disadvantage to be heard in stakeholder discussions on this matter.

- The discussion is isolated from an overall NRC view of how spent fuel management ought to be constructed and conducted, especially at permanently shutdown sites.

- We are increasingly of the opinion that the Commission can improve addressing issues relating to these sites in a more effective organizational footing and a more consistent regulatory approach.

We are unaware of any specific threat to our facilities or changes in the domestic threat environment and are working to better understand the basis for the NRC's proposed changes to the ISFSI security rules and Draft Guide 5033. We are pleased the NRC recognizes that our cask systems are extremely robust. We will continue to participate as best we can in meetings with the regulator on the proposed rule making, most of which are closed to the public and to our personnel who have not yet been cleared.

---

[1] August 2, 2010 letter from Eric Benner, Chief, Licensing Branch, Division of Spent Fuel and Transportation, NMSS, USNRC to Mr. James Connell, ISFSI Manager, Maine Yankee

As few of the permanently shutdown facilities' fuel managers were cleared at the time of the classified briefing given this past summer to promote understanding of the bases for the proposed guidance, those that are not have been forced to rely on second-hand and such unclassified information as can be shared to inform their reactions and prospective comments. While our fuel managers have been in the clearance process, we remain at a collective disadvantage in our ability to comprehensively engage with the staff.

DG 5033 is a Design Basis Threat (DBT) in the pure sense; there is no way to interpret it as, "minimum performance standards," for a stand-alone ISFSI security force. As such, it conflicts with the risk-based standard that NRC has employed, discussed, and operated under since we first planned to move our fuel (all of it, "cold and old,") to dry casks in stand-alone ISFSIs. If a site-specific risk-based analysis yielded a need for a new security strategy, then a new DBT would be needed as the basis for designing the security program. However, in this case we have upset logic by making the first step the development of a DBT under the guise of a draft guide, even if staff terms it a "risk-based approach to rulemaking."

In addition to departing from its historical approach to our security standards, the changes in draft guidance have broad and seemingly unaccounted for impacts including: the increased costs to licensees for security-related capital and operating expenses; elements of local and state government that would be affected; communities and individuals subjected to increased rates to cover direct costs as well as increased taxes cover government costs; and changes to recreational and societal uses of lands and waterways surrounding our plants that have been developed since the NRC released portions of the previous operating sites to unrestricted use.

The currently proposed modifications to the regulatory guidance would provoke a change from the current approach to what the staff terms a, "a risk-informed and performance-based approach with a specific dose acceptance standard." We believe that DG-5033 is ominous as a first step in the ISFSI security rulemaking as it bypasses any risk-based assessment and presumes a denial strategy is required.

The changes proposed would require the stand alone DPC ISFSI sites to perform an analysis at their sites to evaluate the potential radiological consequences from specified NRC security related scenarios.

The changes contained in the proposed DBT would result in significantly increased on-site security response capability requirements, as well the possible reinstatement of an off-site emergency response plan.

Potential on-site security changes to ISFSI sites could include among other things: additional vehicle barriers and additional security personnel whose role could change from detecting a threat and calling for local law enforcement assistance (which is the current regulatory requirement) to denying access by repelling a threat as required at operating plants.

The capital costs and additional annual operating costs to stand alone ISFSI sites are expected be in the millions of dollars if the proposed rules go into effect as based on the draft guide. While it is too early in the process for us to develop specific estimates, we note that implementation of your security requirements over the past decade at operating plants averaged $16,000,000 per site, according to industry figures.

We believe that in proposing – through a Regulatory Guidance document - to discard a regimen that has previously been and is currently judged to be adequate today, there needs to be, especially for our sites, a careful and distinct look at the domestic security environment that the NRC staff believes now justifies such changes and the intelligence that supports the changed environment. We are not aware of domestic intelligence that leads to such significant changes.

Should the Commission staff now view the threat to existing stand alone ISFSIs to have significantly changed on the basis of new "classified information" and that dose consequences to the public now need to be factored into the security performance characteristics at these sites, then the Commission needs to be sure that there has been a thorough discussion with all sites as well as their respective state and local governments. We also suggest that careful thought must be given to alternative federal regulatory requirements and government action that the Commission or the Executive Branch may choose to employ.

Should DG 5033 be implemented as currently proposed, the DPC plants would be faced with;

- Extending their plant site's boundary, or changing their protective strategy from detecting, assessing, and communicating a threat to one of denying access, using engineered security features, or making other changes.
- Potential re-acquisition of large parcels of real estate that was disposed of when the remainder of the site was released by the NRC.
- Significant capital construction and operational costs; significant expansion of staff; significant expenditure of funds to procure and provide for Emergency Planning activities, equipment, agreements, and drills; and significant increases in associated fees to the NRC, licensing and permitting attorneys, outside expertise, contractors, etc. We would emphasize that as permanently shutdown facilities, our sites generate no revenue to support the costs associated with the imposition of such additional regulatory requirements.
- As these actions would cost millions of dollars in capital and annual operating costs, and entail changes to agreements that we made years ago with our state and local governments, we would need to reopen agreements with our state and local communities and bring new rate cases before FERC (as ratepayers will be forced to accept this burden). These costs will ultimately be passed along to the taxpayer as these expenses will be subject to additional litigation with the Department of Energy as it will continue to fail to fulfill its contractual obligations to remove the material from our ISFSIs for the foreseeable future.

Imposing DG 5033 will represent another challenge to the current licensing organizations at NRC as new requirements will be, de facto, imposed and added upon ISFSIs, whether licensed under Part 50 or Part 72. As such, these proposals impact across internal NRC offices, divisions, and licensing regimes as our plants are managed as projects in NMSS, their licenses were developed and implemented in NRR, the Security requirements are addressed by NSIR, and fall across the denoted responsibilities of the two Deputy Executive Directors for Operations. The result is that there is always the great prospect that consideration of our unique status at the outset of initiatives regarding plant safety and security is lacking, and this effort is but the most recent example. We needed specific attention to detail at the outset of this effort, and ask that there be additional and focused interactions with all our sites' cleared personnel prior to further action concerning DG 5033's applicability to them and subsequent rulemaking concerning them.

The changes resulting from the implementation of DG 5033 will also significantly impact all future stand-alone power reactors that permanently shut down as they will increase the cost considerations associated with plant decommissioning costs, spent fuel transfer costs during decommissioning, as well as long term ISFSI facility operational costs.

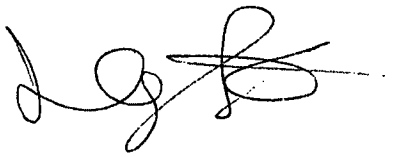
The changes proposed may well represent a major federal action at each of the DPC sites and opens up a wide range of unanticipated issues and lengthy processes associated with it (such as NEPA, insurance requirements, waste confidence considerations, etc.).

Concluding Comments

In the past, the DPC has formally commented that the Commission needs to take a more forceful stand on its waste confidence findings with respect to our sites, especially given the Department of Energy's (DOE's) failure to fulfill its obligation to remove spent fuel and GTCC from our sites. As this new matter arises due to ever-longer periods of storage at permanently shut-down sites and would now undo many of the licensing agreements and practices it has historically stood by at our sites, we would observe that there are sure to be others that arise during ever-increasing periods of storage at permanently-shutdown sites.

We respectfully suggest that the Commission and staff be more focused in its expectations on what a spent fuel management program ought to look like under a comprehensive regulatory program. As the material is under DOE contract, and the circumstances and impacts arise due to DOE's non-performance at these sites, it is not the actions of the licensees, but the Department's who should by now be the responsible entity for maintaining a safe and secure program for the back-end of the fuel cycle and not the ratepayers of our locales, the citizens surrounding our sites, and the taxpayers who will ultimately pay much more should the staffs' proposed DG be adopted and followed by a corresponding rule. The NRC may be now, or should soon be, at the point of developing specific views on what the nation's spent fuel program should accomplish in the immediate, near, and longer terms. We suggest that the recommendations of the Blue Ribbon Commission concerning Storage and Transportation form a sound basis to begin your efforts.

In closing, we assure you that as long as spent fuel and Greater-Than-Class-C Waste is stored on our sites, the DPC members will continue to keep our sites safe and secure.



Wayne Norton, on behalf of the Decommissioning Plant Coalition
President and CEO, Connecticut Yankee and Yankee Rowe
CNO, Maine Yankee

CC: Chairman Jazcko
Commissioner Svincki
Commissioner Ostendorff
Commissioner Magwood
Commissioner Apostolakas
Deputy Executive Director for Operations Michael Weber
Deputy Executive Director for Operations Martin Virgilio