

Public comments on ISG-03 from FRN

A. Introduction

On December 2, 2014 the Nuclear Regulatory Commission (NRC) published a request for comments on a draft Interim Staff Guidance (ISG) document, NSIR/DSP-ISG-03 "Review of Security Exemptions/License Amendment Requests for Decommissioning Nuclear Power Plants" (Agency-wide Document Access and Management System (ADAMS) Accession No. ML14294A170) in the Federal Register (79 FR 28062) under Docket Number (No.) NRC 2014 0255 at www.regulations.gov. The 45-day comment period expired on January 8, 2015.

The NRC received a total of 3 responses to the request for comment on ISG-03 which can be located in ADAMS using Package Accession No. ML15042A208. All of the responses submitted were from nuclear industry organizations. Comments were received from the following:

- Dominion
- Nuclear Energy Institute (NEI)
- EnergySolutions, LLC.

B. General Overview of Comments

1. Comments from Organizations

- a. Nuclear industry organizations provided a total of 37 comments. Sixteen (16) specific comments provided by Industry are associated with the draft ISG Table 1, "Physical Security Licensing Actions for Decommissioning Nuclear Power Facilities." Industry comments submitted generally agreed with the content of ISG-03; but also proposed the inclusion of guidance for reviewers to apply 10 CFR Part 37 security requirements for licensees storing spent fuel under 10 CFR Part 73 requirements. The remaining comments were editorial suggestions and general in nature.

Eleven (11) comments were associated with sections 1 through 8 (purpose, scope, background overview of existing guidance, and other information) and were proposed editorial changes or clarifications.

C. Responses to Specific Comments

1. Dominion commented that Section 4.0, Background, states that the DBT Order, EA-03-086, still applies (at sites with fuel in the spent fuel pool (SFP)). Dominion recommends the NRC indicate that only portions of that Order apply, based on regulatory guide (RG) 5.69 that specifies what structures can be affected by the adversaries, some of which are no longer susceptible. (This same comment applies to other sections throughout the document).

NRC Response: The staff recognizes that portions of EA-03-086 are still in effect (at sites with fuel in the spent fuel pool (SFP)). The staff made editorial changes to ISG-03 to reflect the same.

2. Dominion indicated that Section 4.0, Background, states that portions of interim compensatory measures (ICM) Order EA-02-026 still apply. Since the security requirements in that Order were rescinded in an 11/28/11 NRC letter, there only remains

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an operator training requirement that is specific to an operating reactor and two (2) Emergency Preparedness (EP) requirements that have since been included in EP rulemaking. There doesn't appear to be any security requirements that are still applicable. (This same comment applies to other sections throughout the document.)

NRC Response: The NRC agrees with this comment and appropriate editorial changes have been incorporated throughout.

3. Dominion comments indicated that Section 4.0, Background recognizes the risk of a large offsite radiological release at a decommissioning power reactor storing irradiated fuel in the SFP is lower than the risk of a large offsite radiological release from an operating power reactor and its SFP. As a result Dominion suggests that NRC should also consider the potential radiological consequences associated with a SFP only site as noted in RG 5.65, Vital Area Access Controls, Protection of Physical Security Equipment, and Key and Lock Controls, dated September 1986 (and reviewed by the NRC in June of 2010 with no changes) which indicates that the level of radiation exposure that is considered to endanger the public health and safety is a release that exceeds 10 CFR 100 limits. It states in Section 2 that SFPs could be included in vital areas during threat period when the SFPs pose a threat to public health and safety. After this initial period licensees would have the option of relaxing the SFP safeguards.

NRC Response: Although the NRC agrees that the offsite consequences of a release from a spent fuel pool will decrease with time the design basis threat (DBT) still applies while fuel is in a pool, regardless of release, and as such all licensee submittals for changes to security plans will be evaluated on a site specific basis. No substantive change was made to ISG-03 regarding this comment.

4. Dominion comments indicated that Section 4.0, Background, discusses "spent fuel sabotage" and should only apply to sites with fuel in the SFP. Although this ISG was written for those types of sites, Section 5.0 (p. 7) states that it is critical that the licensee provide the staff with details of the site-specific analysis including the period after the fuel has been moved from the SFP to the ISFSI. A clarification would ensure ISFSI-only sites would not be required to comply with "spent fuel sabotage." The definition of "spent fuel sabotage" in the NRC approved Site Security Plans is not applicable to an ISFSI only site.

NRC Response: The requirement to protect spent fuel from radiological sabotage continues to apply to all ISFSI licensees. A General Licensed (G/L) ISFSI licensee is required to protect spent fuel against the DBT of radiological sabotage and a Specific Licensed (S/L) ISFSI licensee is required to protect spent fuel against radiological sabotage with no reference to the DBT.

5. Dominion comments indicated that in the 3rd paragraph on page 5, Security Plan changes that do not reduce the effectiveness of the plans and can be made without NRC approval. This paragraph references §50.54(p)(1) and should describe §50.54(p)(2).

NRC Response: The NRC disagrees with this comment as the correct reference is §50.54(p)(1). No editorial changes were made to ISG-03 regarding this comment.

6. Dominion comments indicated that Section 6 (p. 10) states that input to an SER serves as the record of the staff's disposition of an application for amendment to, or exemption

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from regulatory requirements, and the information relied on and supplied by the licensee must be docketed and under oath or affirmation.

However, this appears to be a new requirement for exemptions and conflict with RIS 2001-18, Requirements for Oath or Affirmation, dated 8/22/01. RIS 2001-18 requires oath or affirmation on any docketed submittal related to a license application, license amendment, supplemental information or response to a request for information that will be used by the NRC to prepare and SER that approves or denies a license or license amendment. This RIS does not require exemptions to be submitted under oath or affirmation. Is the NRC proposing a revision to RIS 2001-18 that would affect exemptions from CFR requirements in all areas?

NRC Response: Staff agrees with this comment. Editorial changes clarifying the requirements for information to be submitted under oath or affirmation were made to this ISG subject to this comment.

7. Dominion comments indicated Section 7.3 discusses the staff performing a technical assessment of the exemption request, and Attachments 3 and 5 (Flow Charts for 50.90 and Exemption Reviews) include an Acceptance Review (LIC 109). This would be an improvement to the current review process. The Acceptance Review would allow Licensee to know within approximately a month whether the submittal is technically adequate for NRC review. This would be a more efficient process for both the Licensee and NRC Staff.

NRC response: No editorial changes necessary for this generic comment.

8. Dominion provided 16 specific comments regarding the ISG 03 Table 1, "Physical Security Licensing Actions for Decommissioning Nuclear Power Facilities." Dominion provided a general comment describing the Table 1 as incomplete because it does not address every section of the 10 CFR regulatory requirements regarding applicability.

NRC Response: As stated in the draft of ISG 03, Table 1 contains a list of physical security licensing actions for decommissioning nuclear reactor facilities which licensees have previously submitted to the NRC for approval. Table 1 is not intended to be an all-inclusive list regarding potential exemptions submittals and licensing actions which licensees can submit for approval, nor is Table 1 an all-inclusive regulatory applicability matrix. Because of the unique site-specific characteristics of each decommissioning facility, each licensing action request submitted to the NRC will need to be independently evaluated by the staff when determining whether to grant or deny the requested action.

Staff made editorial changes to Table 1 of this ISG as appropriate to include additional information for regulatory applicability to ISFSIs.

9. NEI comments provided proposed wording changes/edits to Section 4.0, page 5, paragraph 4 of ISG 03. The proposed ISG 03 wording states, "The designation of being in the process of decommissioning does not automatically allow all changes to be determined as not decreasing this effectiveness." The NEI proposed change/edit states, "The effectiveness of the security plan should be determined commensurate with the risk of harm to the health and safety of the public."

NRC Response: The NRC agrees with the concept proposed and editorial changes have been incorporated in ISG 03.

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10. NEI comments proposed changes/edits to Section 5.1.1, paragraph 2, Item 6, of page 8 to remove the sentence and replace it with: "Reduction in overall security staffing based on site-specific protective strategies."

NRC Response: The NRC agrees with the language change in part, and editorial changes have been made to ISG 03 and Section 5.1.1, paragraph 2, Item 6, of page 8 now states "reductions in overall security staffing below the regulatory required minimum (10 CFR 73.55 requires a minimum of 10 armed responders) based on site specific analysis/protective strategies."

11. NEI proposed adding the following language to Section 5.1.2, paragraph 1, "The security requirements or protective strategy for a facility that has transferred its spent fuel to wet storage has the potential to be modified without a reduction in the overall effectiveness of the security plans."

NRC Response: The NRC agrees with the language and the editorial changes have been incorporated in ISG-03 in Section 5.1.2.

12. NEI submitted a general comment to ISG-03 describing that risk acknowledgment should be considered in all three phases of decommissioning. This should be taken into effect when licensees are submitting security plan changes.

NRC Response: The NRC agrees with this general comment that licensees submitting physical security plans should consider risk throughout decommissioning.

13. EnergySolutions provided comment to ISG 03 recommending the ISG address the transition of nuclear power plant security programs from Part 73 to Part 37.

NRC Response: Since the security requirements of parts 73 and 37 address differing security goals (the prevention of spent fuel sabotage vs. the mitigation of theft and diversion), and security plans required under part 37 are not reviewed by the NRC, it is not appropriate to cover those plans in this document. There is existing industry-provided guidance for the implementation of security for part 37 at part 50 licensees (which includes decommissioning nuclear power plants).

No editorial changes necessary for this generic comment.

14. EnergySolutions provided comment to ISG 03 describing that Part 73 physical security in place for spent fuel is sufficient for the site, and as the sites security requirements are reduced, a transition from Part 73 to Part 37 can be undertaken to reduce the burden of unnecessary controls.

NRC Response: Although a blanket statement of sufficiency is not appropriate to assume, the part 73 security plans will be evaluated as per the ISG to determine whether they continue to provide high assurance of adequate protection for the remaining spent fuel. Part 37 security requirements will be used where applicable, and will remain reviewed only as an inspection activity. Since the security plan required by part 37 is not reviewed as part of licensing decisions by NRC staff in support of decommissioning activities it will not be addressed in this ISG.

No editorial changes necessary for this generic comment.

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15. EnergySolutions provided comment to ISG 03 describing the ISG should recognize that in those situations where both Part 37 and Part 73 programs are in place, the background investigation period for access authorization required under Part 73 (3 years) is sufficient and the more extensive period (7 years) required by Part 37.25(a) is not necessary.

NRC Response: As this is a specific example of the implementation of part 37 it will not be addressed in this ISG. Examples of using the implementation of part 73 security plans to conform to part 37 requirements are addressed in the implementation guidance for part 37: NUREG-2155, and in Q&A's available on the NRC's public website at <http://www.nrc.gov/security/byproduct/10-cfr-part-37.html>.

No editorial changes necessary for this generic comment.