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NUCLEAR ENERGY INSTITUTE

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October 19, 2011

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

**Subject:** Industry Comments on Draft Regulatory Guide DG-5033 "Security Performance (Adversary) Characteristics for Physical Security Programs for 10 CFR Part 72 Licensees"

**Project Code: 689**

Dear Mr. Brochman:

The Nuclear Energy Institute (NEI)<sup>1</sup> appreciates the opportunity to comment on Draft Regulatory Guide DG-5033, "Security Performance (Adversary) Characteristics for Physical Security Programs for 10 CFR Part 72 Licensees." We also appreciated the opportunity to interact with the staff in separate meetings on May 2, 2011, July 26, 2011 and September 22, 2011 to discuss related information at the Safeguards and Classified (Secret/NOFORN) Information levels.

On behalf of the industry, NEI has attached general comments regarding potential ISFSI rulemaking and specific comments on DG-5033. Based on the industry's review of the information that has been

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<sup>1</sup> NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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provided by the staff, it does not appear that there is a sufficient basis for additional protective measures for ISFSIs. The following paragraphs summarize the industry's position supporting this conclusion.

The responsibility for long term storage of spent nuclear fuel remains an unresolved issue for the Federal Government. Until this issue is resolved, plans for new rulemaking would shift substantial burden to the nuclear industry, when ultimately this burden may reside with the Department of Energy (DOE). The resolution of this issue would eliminate the need for additional rulemaking to address security at ISFSIs; rulemaking prior to the resolution of this issue would be premature.

The NRC has constructed this draft regulatory guidance based on a new evaluation of earlier studies that were only intended to inform the staff with regards to potential ISFSI casks vulnerabilities. The assumptions, methodology, and technical analysis used for those studies are inadequate to reach the staff's conclusions regarding projected dose calculations for cask leakage and are inadequate to justify new ISFSI security rulemaking. Rulemaking implementing requirements above and beyond current regulatory requirements should not proceed with the absence of updated applicable studies or physical testing and the validation of an increased threat environment.

Specifically to the construct of DG-5033, the Commission, in SRM-SECY- 07-0148, "Independent Spent Fuel Storage Installation Security Requirements for Radiological Sabotage," dated December 18, 2007 directed that, "The staff should ensure that the proposed regulation and guidance documents make it clear that these requirements do not impose a new design basis threat." The SRM also stated, "The Commission has approved the staff's recommendation to develop ISFSI regulatory guidance that would be bounded by the adversary characteristics regulatory guidance supporting the Design Basis Threat (DBT) for radiological sabotage associated with power reactors." Contrary to the directions provided in the SRM, DG-5033 contains a substantial amount of information related to increased adversary capabilities that are not in the DBT for power reactors. Security measures for ISFSIs above those currently employed cannot be justified without a comprehensive vulnerability and consequence analysis.

The industry requests a follow-up meeting with your staff as soon as practical to discuss the comments provided in this letter and specific comments provided on the regulatory draft guidance.

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If you have questions or require additional information, please contact me at (202) 739-8174;  
[dk@nei.org](mailto:dk@nei.org) or Jerud Hanson at (202) 739-8053; [jeh@nei.org](mailto:jeh@nei.org).

Sincerely,



David R. Kline

c: Mr. Michael C. Layton, NSIR/DSP, NRC  
Ms. Sandra L. Wastler, NSIR/DSP/MWSB, NRC  
Ms. Susan H. Bagley, NSIR/DSP/MWSB, NRC

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