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Docket: NRC-2018-0137

Dispositioning of Technical Specifications that are Insufficient to Ensure Plant Safety

Comment On: NRC-2018-0137-0004

Dispositioning of Technical Specifications That Are Insufficient To Ensure Plant Safety

Document: NRC-2018-0137-DRAFT-0004

Comment on FR Doc # 2018-19677

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General Comment

Comments are provided by the Technical Specifications Task Force on Draft Regulatory Guide DG-1351, "Dispositioning of Technical Specifications that are Insufficient to Ensure Plant Safety" (Federal Register Vol. 83, 31429, dated July 5, 2018) Docket ID NRC-2018-0137

Attachments

TSTF-18-10 TSTF Comments on DG-1351

October 8, 2018

TSTF-18-10
PROJ0753

Ms. May Ma
Office of Administration
Mail Stop: TWFN-7-A60M
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

SUBJECT: TSTF Comments on Draft Regulatory Guide DG-1351, "Dispositioning of Technical Specifications that are Insufficient to Ensure Plant Safety" (Federal Register Vol. 83, 31429, dated July 5, 2018)
Docket ID NRC-2018-0137

The Technical Specifications Task Force, a joint activity of the Pressurized Water Reactor Owners Group (PWROG), the Boiling Water Reactor Owners' Group (BWROG), and the AP1000 Owners Group (APOG), is providing the attached comments on the subject draft Regulatory Guide (DG-1351) which endorses, with exceptions, industry guidance on licensee actions to address nonconservative technical specifications.

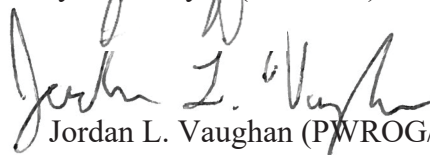
On September 11, 2018, the NRC extended the comment period on DG-1351 to October 11, 2018 (Federal Register 83 FR 45980) in response to an August 1, 2018 request from the Nuclear Energy Institute (NEI).

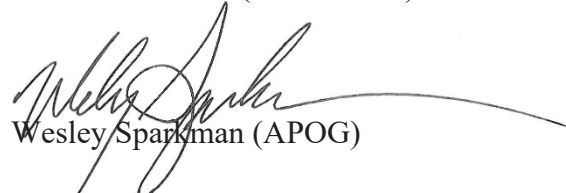
Should you have any questions, please do not hesitate to contact us.


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cc: Michelle Honcharik, Technical Specifications Branch
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TSTF Comments on Draft Regulatory Guide DG-1351, "Dispositioning of Technical Specifications that are Insufficient to Ensure Plant Safety"
(Federal Register Vol. 83, 31429, dated July 5, 2018 - Docket ID NRC-2018-0137)

Background

Draft regulatory guide DG-1351 endorses Nuclear Energy Institute (NEI) 15-03, Revision 2, "Licensing Actions to Address Nonconservative Technical Specifications," with exceptions. The TSTF, with the support of the Pressurized Water Reactor Owners Group (PWROG), the Boiling Water Reactor Owners' Group (BWROG), and the AP1000 Owners Group (APOG), supported NEI in the development of NEI 15-03.

In 2013, the Nuclear Regulatory Commission (NRC) staff suggested that the TSTF develop guidance on licensee actions to address nonconservative Technical Specifications (NCTS) to replace NRC Administrative Letter (AL) 98-10, "Dispositioning of Technical Specifications that are Insufficient to Ensure Plant Safety." The industry guidance would be in lieu of new NRC guidance. The TSTF agreed and the NRC organized a presentation on the topic at the 2014 NRC Regulatory Information Conference. Two of the TSTF members were invited speakers.

The industry and the NRC met on September 24, 2014 and the TSTF developed a draft guidance document. The draft was provided to the NRC and discussed in a public meeting on November 13, 2014. After addressing the NRC comments, the TSTF worked with NEI to develop NEI 15-03, which was submitted to the NRC on May 11, 2015.

NEI, the TSTF, and the NRC met in a public meeting on July 11, 2016 to discuss NEI 15-03. Based on NRC comments, a revision was developed and NEI 15-03, Revision 1, was submitted on October 31, 2016.

The NRC staff requested another meeting on August 8, 2017 to discuss additional comments. The industry revised NEI 15-03 to address the NRC staff comments and submitted Revision 2 on October 2, 2017.

Comments

Purpose of the Regulatory Guide

The purpose of DG-1351 is to endorse the industry guidance in NEI 15-03. However, DG-1351 does not use the same language or purpose as NEI 15-03. Instead, the DG uses the language and purpose from the twenty-year-old AL 98-10, which is inconsistent with NEI 15-03. Some examples are:

- NEI 15-03 addresses Nonconservative Technical Specifications (NCTS), which is defined as a Technical Specification (TS) "that does not protect the assumptions or conclusions in either Updated Final Safety Analysis Report (UFSAR) or the Technical Specification Bases." AL 98-10 and DG-1351 refer to TS that are "insufficient to ensure plant safety," but the term is not defined.
- NEI 15-03 has a broader scope than AL 98-10 and DG-1351. Section 2 of NEI 15-03 states, "This document is intended to fully encompass the subject of AL 98-10, which addresses 'specific values or required actions in TS (that) may not assure safety,' and may

further include other nonconservative TS requirements such as surveillance requirements, applicability statements, design features, and administrative controls." However, DG-1351, Section B, continues to refer to "specific values or required action in TS may be insufficient to ensure plant safety."

The TSTF recommends that the DG be revised to be consistent in purpose and language with NEI 15-03.

Exception Regarding Timeliness of Corrective Actions

In DG-1351 Section B, "Discussion of Timeliness of Corrective Action," and Section C, "Staff Regulatory Guidance," Paragraphs 1.b and 4.a, the DG took exception to NEI 15-03 and states that a NCTS should be resolved at the first available opportunity and, absent justification, prior to restart from the next planned outage. To support this position, the DG references two revisions of the NRC's Inspection Manual chapter on the resolution of degraded or nonconforming conditions.

DG-1351 acknowledges that the time limits in the exception are not supported by the regulations. It states, "the timing of corrective actions or the concept of what constitutes a prompt corrective action has not been specifically codified." This is consistent with NEI 15-03, Section 3.6, "Implementation of Final Corrective Action," which states:

In addressing an NCTS, a licensee must take timely corrective action consistent with its quality assurance program. There is no definition of "timely" in the regulations or other binding requirements. 10 CFR 50, Appendix B, Criterion XVI, "Corrective Action," refers to prompt identification and correction of conditions adverse to quality, but does not further define "prompt." Because these terms are undefined, an appropriate timeline for correction must be commensurate with the safety significance of the issue.

As stated in DG-1351, "Regulatory guides are not substitutes for regulations and compliance with them is not required."

Imposing an expectation that licensees act within a time period not specified in the regulations or a plant's licensing basis is inconsistent with DG-1351 Section D, "Implementation," which states:

- "The NRC staff does not intend or approve any imposition or backfitting of the guidance in this RG. The NRC staff does not expect any existing licensee to use or commit to using the guidance in this RG, unless the licensee makes a change to its licensing basis."
- "During regulatory discussions on plant specific operational issues, the staff may discuss with licensees various actions consistent with staff positions in this RG, as one acceptable means of meeting the underlying NRC regulatory requirement. Such discussions would not ordinarily be considered backfitting even if prior versions of this RG are part of the licensing basis of the facility. However, unless this RG is part of the licensing basis for a facility, the staff may not represent to the licensee that the licensee's failure to comply with the positions in this RG constitutes a violation."

Summarizing, the time limits on taking corrective action put forward in the DG have no identified basis, and the NRC cannot use the positions to impose new requirements or in the inspection process. Any attempt to impose the time limits would be an unevaluated backfit. Therefore, the TSTF recommends that the exception and all other discussions related to defining "timely" or "prompt" action be removed.

Exception Regarding Whether the Lack of a TS can be an NCTS

NEI 15-03, Section 2, states "the simple absence of a TS requirement is not by itself an NCTS. Additionally, specific licensee TSs that are less restrictive than standard technical specifications or technical specifications of other licensees are not considered nonconservative on that basis alone."

In DG-1351 Section C, "Staff Regulatory Guidance," paragraph 1.a, the DG states:

The NRC staff position is that the discovery of a TS that does not comply with the requirements of 10 CFR 50.36 (e.g., improper or inadequate TS value, required action, allowed outage time, or surveillance frequency) is a nonconservative TS (NCTS). In addition, the NRC staff notes that the absence of a TS requirement as required by 10 CFR 50.36 can also be an NCTS.

In paragraphs 2.a and 2.b, the DG also states that absence of a TS requirement can be an NCTS.

The TSTF disagrees with this position. A plant's TS were issued by the NRC as part of the license and represents the NRC's determination of the requirements necessary to satisfy 10 CFR 50.36. As stated in the DG, "not every assumption or conclusion in the UFSAR or TS bases needs to be protected by a TS requirement." The NRC exercises significant latitude in determining what requirements should or should not be in a facility's TS and those decisions should not be questioned without following the appropriate regulatory processes.

A consequence of the DG exception is that it would permit the NRC staff to avoid the backfit provisions in 10 CFR 50.109. If the NRC determines that a new TS requirement should be added to a facility's TS, the action must be evaluated under the backfit provisions using the guidance in NRC Management Directive 8.4, "Management of Facility-Specific Backfitting and Information Collection." However, under the DG position, an NRC inspector could determine that a new or more restrictive TS requirement is an NCTS and issue a finding against the licensee's Corrective Action Process for not resolving the perceived omission. This would coerce the licensee into submitting an amendment to add the new requirement in order to avoid a further violation for failure to take timely corrective action. Since the licensee submits the amendment, the NRC does not have to evaluate their actions under the backfit provisions. This is contrary to the intent of 10 CFR 50.109 and Section D of the DG.

The TSTF recommends removal of the exception and all other discussions related to the lack of an existing TS being an NCTS.

Comment on References to Inspection Manual Chapter (IMC) 0326

DG-1351 makes multiple references to IMC-0326. NEI 15-03 does not reference IMC-0326. The Nuclear Energy Institute, supported by the TSTF, is developing industry guidance on the operability determination process and has recommended that the NRC revise IMC-0326 to be consistent with the industry guidance. Given that IMC-0326 may change in a manner that affects the quotes in the RG, the TSTF recommends eliminating those references and instead using 10 CFR 50, Appendix B, terminology, such as "conditions adverse to quality."

Summary

In summary, the TSTF recommends the following changes to the DG:

Location	Comment
Title	Revise the title to be consistent with NEI 15-03. We recommend, "Actions to Address Nonconservative Technical Specifications."
Purpose	Revise the terminology to be consistent with NEI 15-03. Replace the phrase, "for dispositioning of technical specifications (TS) that are insufficient to ensure power plant safety," with "for dispositioning technical specifications (TS) that do not protect the assumptions or conclusions in either Updated Final Safety Analysis Report (UFSAR) or the TS Bases."
Related Guidance	Eliminate reference to IMC-0326.
Section B, "Reason for Issuance"	Eliminate the term "with exceptions" from the last sentence.
Section B, "Background"	Revise the terminology to be consistent with NEI 15-03. Replace the phrase "insufficient to ensure plant safety" with "nonconservative."
Section B, "Discussion on NEI 16-07 as a Secondary Reference," second paragraph	Replace the term "degraded or nonconforming condition" with "condition adverse to quality," and eliminate references to IMC-0326.
Section B, "Discussion on Timeliness of Correction Action"	Delete the topic.
Section C, paragraph 1.a	Delete the paragraph.

Location	Comment
Section C, paragraph 1.b	Delete the paragraph.
Section C, paragraph 1.c	Delete the paragraph. The stated clarification is in NEI 15-03, Section 3.6, first paragraph.
Section C, paragraph 2	Delete the paragraph.
Section C, paragraph 4	Delete the paragraph.
References	Eliminate Reference 5, IMC-0326.