

**From:** Santos, Cayetano  
**Sent:** Friday, January 29, 2021 2:37 PM  
**To:** Vogtle PEmails  
**Subject:** FW: Question on 10 CFR 73.55 applicability milestone for VRG  
**Attachments:** Question to Staff on 73.55 Milestone Basis.pdf

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**From:** Kellenberger, Nicholas <[X2NRKELL@SOUTHERNCO.COM](mailto:X2NRKELL@SOUTHERNCO.COM)>  
**Sent:** Friday, January 15, 2021 11:21 AM  
**To:** King, Mike <[Michael.King2@nrc.gov](mailto:Michael.King2@nrc.gov)>  
**Cc:** Roberts, Kelli Anne <[KROBERTS@southernco.com](mailto:KROBERTS@southernco.com)>; Leighty, Steven <[sleighty@southernco.COM](mailto:sleighty@southernco.COM)>  
**Subject:** [External\_Sender] Question on 10 CFR 73.55 applicability milestone for VRG

Mike,

As discussed during the touchpoint call on Wednesday, attached is our question on 10 CFR 73.55(a)(4). As I say in the attached, we don't think we will need to submit any licensing action related to the Protected Area. Our plan is still to establish the PA prior to 103(g), but as Kelli said during the December VRG, we still do not understand the Staff's regulatory basis for tying PA establishment to 103(g).

Thanks,

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**Hearing Identifier:** Vogtle\_COL\_Docs\_Public  
**Email Number:** 604

**Mail Envelope Properties** (MN2PR09MB52445610957728BB2421BF83E5B99)

**Subject:** FW: Question on 10 CFR 73.55 applicability milestone for VRG  
**Sent Date:** 1/29/2021 2:36:49 PM  
**Received Date:** 1/29/2021 2:36:53 PM  
**From:** Santos, Cayetano

**Created By:** Cayetano.Santos@nrc.gov

**Recipients:**  
"Vogtle PEmails" <Vogtle.PEmails@nrc.gov>  
Tracking Status: None

**Post Office:** MN2PR09MB5244.namprd09.prod.outlook.com

<b>Files</b>	<b>Size</b>	<b>Date &amp; Time</b>
MESSAGE	1067	1/29/2021 2:36:53 PM
Question to Staff on 73.55 Milestone Basis.pdf		190859

**Options**  
**Priority:** Normal  
**Return Notification:** No  
**Reply Requested:** No  
**Sensitivity:** Normal  
**Expiration Date:**

SNC still plans to establish the PA prior to the 10 CFR 52.103(g) finding. We do not foresee a need to request an exemption from 10 CFR 73.55(a)(4) as previously discussed. However, if that exemption becomes a necessity, it is important that SNC and the Staff have a common understanding of the regulatory basis of the applicable regulation. As requested at the December VRG, SNC is preparing to discuss this topic at the 1/21/21 cVRG and would like to receive feedback on the question posed during the 9/2/20 cVRG (copied below). The 9/2 meeting followed an 8/27/20 public meeting. After the 9/2/20 cVRG SNC identified further information from the COLA review which is provided below and substantiates the position SNC has communicated to the staff regarding the milestone of prior to initial fuel load being applicable to the applicability of 10 CFR 73.55.

## Question:

SNC seeks to understand the regulatory basis to support tying the applicability of 10 CFR 73.55 to the 10 CFR 52.103(g) finding. SNC understands the definition of operational phase but cannot find a tie from the operational phase to 10 CFR 73.55. Also, SNC cannot find support in the regulations, licensing basis, or regulatory guidance for the staff's assertion that the Protected Area exists at the 10 CFR 52.103(g) finding.

## Background:

The following information is provided to refresh the staff on the discussions held in August and September and to provide historical correspondence that was identified after the September VRG.

### 8/27/20 Public Meeting

During the meeting NRC staff provided a presentation (ML20238C109) in which they provided their interpretation of when the licensee must be in compliance with 10 CFR 73.55. 10 CFR 73.55(a)(4) requires implementation of 73.55 prior to fuel being allowed onsite (protected area). The staff stated the protected area exists at the 10 CFR 52.103(g) finding because all physical security SSC required by regulation will have been constructed and found acceptable by the staff. They stated that 10 CFR 73.55 applies to power reactors in the operational phase, and that plants are in the operational phase when the 52.103(g) finding is made. Therefore, 10 CFR 73.55 applies upon these two conditions: 1) 10 CFR 52.103(g) finding has been made and 2) fuel assemblies are contained within the PA boundary.

During the meeting SNC provided the position based on review of in the ITAAC, SNMPP, and PSP, SNC that the licensing basis:

- Allows for receipt and storage of SNM under the SNMPPP;
- Once new fuel is stored, it must remain protected in accordance with the SNMPPP until the PA is declared operational in accordance with 10 CFR 73.55;
- Protection in accordance with the SNMPPP is limited to the defined CAA; and
- Once protection of SNM is required outside the bounds of the SNMPPP, SNC must meet the requirements in UFSAR Table 13.4-201 by having an operational protected area compliant with all aspects of 10 CFR 73.55.

SNC's review of the regulations and rulemaking for 10 CFR 73.55 found no clear and documented regulatory tie between 10 CFR 73.55 and the 10 CFR 52.103(g) finding.

9/2/20 cVRG

SNC provided additional information during the meeting and provided comments and questions on the staff's position presented during the 8/27/20 public meeting.

NRC position: All physical security SSCs required to implement our Physical Security Plan are not covered by ITAAC

SNC comment: As licensed, the Unit 3 ITAAC only cover three sides of the PA boundary. PA is integrated for Units 1 through 3, ITAAC does not cover Unit 1&2 SSCs or the integration activities. The NRC accepted security UINs and the submitted ICNs state, "The VEGP Unit 3 Plant Security System ITAACs only cover the Unit 3 plant security system design commitment scope."

NRC Position: 10 CFR 73.55 applies to plants in the operational phase.

SNC Comment: NRC's draft and final Rule for 10 CFR 73.55 (RIN 3150-AG63) appear to be silent on a tie of 73.55 to the operational phase and to the 103(g) finding.

NRC Position: The protected area exists when the SSCs are installed and tested.

SNC Comment: The definition of protected area from 10 CFR 73.2 Definitions, "Protected area means an area encompassed by physical barriers and to which access is controlled."

The definition requires more than just the "physical security hardware required by regulation" to exist for a PA to exist, control of access must be implemented for a PA to exist. The ability to control access requires the other aspects of the program required by 73.55 that are outside of ITAAC (e.g., staffing, training, procedures, etc.)

NRC Position: "Alternatively, licensees may rely on their NRC-approved 10 CFR 73.67 plans to protect special nuclear material prior to the 10 CFR 52.103(g) finding."

SNC Comment: No ties were identified in the SNMPPP or PSP that ties their use to the 103(g) finding. No limitations were identified in the regulation on the use of 73.67 to protect new fuel after the 103(g) finding.

NUREG-2124 Final COLA SER, section 1.5.5 discusses the transition from the SNMPPP under 73.67 to the 73.55 PA using the following language:

"The applicant also stated that once the PA is declared operational in accordance with 10 CFR 73.55(a)(4), the annex [containing the SNMPPP] would no longer be required and could be removed in accordance with 10 CFR 50.54(p)."

This type of language tying the sunseting of the SNMPPP to the declaration of an operational PA under 73.55 is repeated three times

Information identified after the 9/2/20 cVRG

During the COLA review the NRC asked RAI 13.06 VR2 which asked, in part,

In the absence of existing NRC regulation regarding the timing for providing an operational PA, identify the appropriate milestone for declaration of an operational PA and implementation of

the §73.55 requirements, and specify an acceptable regulatory framework for assuring the licensee's adherence to this milestone activity.”

SNC response to this portion of the RAI,

In the absence of existing NRC regulation regarding the timing for providing an operational PA, the applicant proposes the addition of a new license condition to provide assurance of the licensee's adherence to this milestone activity. This milestone would specify that new fuel as SNM may be received and stored in a controlled access area (CAA) in accordance with the requirements of 10 CFR 73.67, until such time as an operational PA that satisfies the requirements of 10 CFR 73.55(e)(8) is established. Because SNM will be stored inside the CAA, which is entirely encompassed within the boundary of the proposed PA, upon declaration of an operational PA, the remaining requirements of 10 CFR 73.55 shall be implemented. The PA shall be established and declared operational prior to initial fuel load.

Vogtle COLA Part 10 was revised in COLA Revision 8 to include this proposed license condition:

The licensee shall receive and store new fuel as SNM in a controlled access area (CAA) in accordance with the requirements of 10 CFR 73.67, until such time as an operational protected area (PA) that satisfies the requirements of 10 CFR 73.55(e)(8) is established. If new fuel is already stored in a CAA that is within the boundary of the proposed PA, then upon declaration of an operational PA, the remaining requirements of 10 CFR 73.55 shall be implemented. The PA shall be established and declared operational prior to initial fuel load.

(SNC letter ND-11-0313, ADAMS Accession No. ML110660153)

While the proposed license condition did not end up in the COL, SNC cannot find any staff response rejecting the information provided in the docketed correspondence from the COLA.

This response was based on the guidance found in RG 5.76 which ties 10 CFR 73.55 applicability to when the PA boundary meets 10 CFR 73.55(e)(8) and the protected area being declared operational not to the 10 CFR 52.103(g) finding.

(U) Except for mixed-oxide (MOX) fuel assemblies, the Commission requirements of 10 CFR 73.67, “Licensee Fixed Site and In-Transit Requirements for the Physical Protection of Special Nuclear Material of Moderate and Low Strategic Significance,” apply and must be met until fuel assemblies are received inside an operational protected area. Consistent with 10 CFR 73.55(a)(4), applicants for an operating license under the provisions of 10 CFR Part 50, or holders of a COL under the provisions of 10 CFR Part 52, shall implement the requirements of 10 CFR 73.55 before special nuclear material (SNM) in the form of fuel assemblies are allowed on site (in the protected area). ***An acceptable method to meet this requirement is for licensees to determine when the protected area meets the requirements of 10 CFR 73.55(e)(8). When this is accomplished and the protected area has been declared operational, the requirements of 73.55(a)(4) apply.***

While this guidance does not reference 10 CFR 52.103(g) or fuel load it is consistent with SNCs current position and SNC’s 2011 RAI response.