



POLICY ISSUE

(Notation Vote)

January 22, 2024

FOR: The Commissioners SECY-24-0006

FROM: Daniel H. Dorman
Executive Director for Operations

SUBJECT: DENIAL OF REQUEST 11 IN PETITION FOR RULEMAKING (PRM)-72-6 AS PART OF NOTICE DISCONTINUING INDEPENDENT SPENT FUEL STORAGE INSTALLATION SECURITY REQUIREMENTS RULEMAKING

PURPOSE:

The purpose of this paper is to request that the Commission approve the staff's recommendation to deny Request 11 in Petition for Rulemaking (PRM)-72-6. This paper fulfills the staff's commitment in SECY-22-0098, "Rulemaking Options for Revising Security Requirements for Facilities Storing Spent Nuclear Fuel [SNF] and High-Level Radioactive Waste [HLW]," dated November 14, 2022 (Agencywide Documents Access and Management System No. ML22243A143), to follow the U.S. Nuclear Regulatory Commission (NRC) process, described in Title 10 of the *Code of Federal Regulations* (10 CFR) 2.803, "Petition for rulemaking—NRC action," to resolve Request 11.

BACKGROUND:

In SECY-07-0148, "Independent Spent Fuel Storage Installation Security Requirements for Radiological Sabotage," dated August 28, 2007 (ML062860177, nonpublic; ML080030050, redacted), the staff proposed to develop new security requirements to update the security regulations for independent spent fuel storage installations (ISFSIs). On November 24, 2008, Sandra Gavutis, Executive Director of C-10 Research and Education Foundation, Inc. (the

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petitioner), filed a PRM (ML083470148). The petitioner requested that the NRC amend its regulations concerning dry cask safety, security, transferability, and longevity.

The petitioner made 12 specific requests in the petition. The NRC docketed the petition as PRM-72-6 and noticed it in the *Federal Register* (FR) for public comment on March 3, 2009 (74 FR 9178). On October 16, 2012, the NRC denied 9 of the petitioner's requests (Requests 1–3, 5–8, 10, and 12), reserved 2 requests for future rulemaking determination (Requests 4 and 9), and accepted 1 request (Request 11) for consideration within the context of the ISFSI security requirements rulemaking effort (77 FR 63254). Subsequently, on June 24, 2016, the NRC announced its decision to deny Requests 4 and 9 (81 FR 41258).

Request 11 in PRM-72-6 asked that the NRC amend its regulations to do the following:

Require Hardened On-Site Storage (HOSS) at all nuclear power plants as well as away-from-reactor dry cask storage sites: that all nuclear industry interim on-site or off-site dry cask storage installations or ISFSIs be fortified against attack. In addition, all sites should be safeguarded against accident and age-related leakage.

In accepting Request 11, the NRC stated that the NRC has not mandated HOSS because the agency “has, consistently, found that the robust nature of dry cask storage systems approved by the NRC under 10 CFR part 72 assures the protection of public health, safety, and security” (77 FR 63254). The NRC indicated that it, nevertheless, accepted Request 11 because the substance of Request 11 is relevant to the potential rulemaking regarding enhancements to the security of spent fuel dry storage facilities. (77 FR at 63254).

In SECY-19-0100, “Discontinuation of Rulemaking—Independent Spent Fuel Storage Installation Security Requirements,” dated October 9, 2019 (ML19172A301), the staff requested Commission approval to discontinue the rulemaking that was, at that time, limited to codifying the requirements of the security orders issued after the terrorist attacks of September 11, 2001. SECY-19-0100 also recommended that the Commission deny Request 11 in PRM-72-6. In SRM-SECY-19-0100, dated August 4, 2021 (ML21217A045), the Commission disapproved the staff's request to discontinue the rulemaking and to deny Request 11 in PRM-72-6 and directed the staff to provide the Commission with a notation vote paper with a full range of options for the ISFSI security rule.

DISCUSSION:

In SECY-22-0098, the staff provided the Commission options for the ISFSI security rule. The staff outlined its determination that the existing security requirements for ISFSIs, together with the additional requirements in the post-9/11 security orders, provide reasonable assurance of adequate protection of public health and safety for facilities storing SNF and HLW and recommended that the Commission approve discontinuing the Commission-directed rulemaking in SRM-SECY-07-0148, dated December 18, 2007 (ML073530119). Additionally, SECY-22-0098 stated that the staff would communicate its determination on Request 11 in PRM-72-6 after receiving the Commission's direction on that paper, and specifically sought delegation to the Executive Director for Operations to issue the *Federal Register* notice discontinuing the rulemaking. SECY-22-0098 also included a commitment that the staff would follow the normal process for decision-making on the PRM. In SRM-SECY-22-0098, dated October 4, 2023 (ML23277A281), the Commission approved the staff's recommendation to

discontinue the ISFSI security rulemaking, as well as the delegation to the Executive Director for Operations for authority to issue the related *Federal Register* notice.

The staff continues to believe that the current regulatory framework provides reasonable assurance of adequate protection of public health and safety for facilities storing SNF and HLW. Therefore, consistent with the Commission's direction in SRM-SECY-22-0098 to discontinue the ISFSI security rulemaking and in accordance with 10 CFR 2.803(i)(2), the staff is recommending denial of Request 11 in PRM-72-6.

The staff requests delegation to the EDO of the authority to issue the notice of denial of Request 11. If approved, the staff would issue a single *Federal Register* notice both discontinuing the rulemaking and providing notice of the PRM denial.

RECOMMENDATIONS:

The staff recommends that the Commission take the following actions:

- Deny Request 11 in PRM-72-6.
- Approve—
 - Including the petition denial in the discontinuation action previously approved in SRM-SECY-22-0098.
 - Delegating to the EDO the signature authority for the *Federal Register* notice for the denial of Request 11 in PRM-72-6.
 - Making this SECY paper publicly available once the petitioner has been notified of the NRC's action.

If the Commission approves these recommendations, the staff will do the following:

- Provide the Commission with a Notice of Resolution of Petition for Rulemaking signed by the EDO 5 days before forwarding the *Federal Register* notice to the Office of the Federal Register for publication.
- Inform the petitioner of the decision to deny the petition.
- Inform the appropriate Congressional committees of these actions.
- Publish a single *Federal Register* notice discontinuing the rulemaking, "Independent Spent Fuel Storage Installation Security Requirements for Radiological Sabotage," and denying Request 11 in PRM-72-6.

RESOURCES:

This paper does not address any new commitments or resource implications.

COORDINATION:

The Office of the General Counsel reviewed this package and has no legal objection.

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Dated: January 22, 2024

ADAMS Accession No.: ML23328A003

***e-concurrence**

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