

VIRGINIA ELECTRIC AND POWER COMPANY
RICHMOND, VIRGINIA 23261

January 16, 2024

10 CFR 73.5

ATTN: Document Control Desk
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

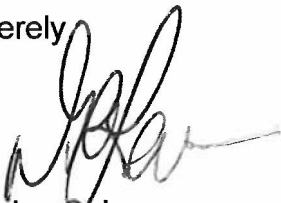
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Docket Nos.: 50-338/339
72-16/56
License Nos.: NPF-4/7
SNM-2507

VIRGINIA ELECTRIC AND POWER COMPANY
NORTH ANNA POWER STATION UNITS 1 AND 2
SUPPLEMENT TO REQUEST FOR EXEMPTION FROM ENHANCED WEAPONS,
FIREARMS BACKGROUND CHECKS, AND SECURITY EVENT
NOTIFICATIONS IMPLEMENTATION

In Reference 1, Virginia Electric and Power Company (Dominion Energy Virginia) requested an exemption from the specific requirements in 10 CFR Part 73, Subpart T, "Security Notifications, Reports, and Recordkeeping," 10 CFR 73.1200(a) through 10 CFR 73.1200(t), "Notification of Physical Security Events," 10 CFR 73.1205(a)(1) through 10 CFR 73.1205(e), "Written Follow-up Reports of Physical Security Events," 10 CFR 73.1210(a)(1) through 10 CFR 73.1210(h), "Recordkeeping of Physical Security Events," and "Suspicious Activity Reports," 10 CFR 73.1215(a) through 10 CFR 73.1215(f). After submittal, it was identified that Page 5 was omitted from the attachment to Reference 1. This letter provides Page 5 of the Reference 1 attachment. For clarity, the attachment to this letter resubmits the Reference 1 attachment in its entirety.

If you have any questions, please contact Julie Hough, Corporate Nuclear Regulatory Affairs, at (804) 273-3586.

Sincerely,



Douglas C. Lawrence
Senior Vice President – Nuclear Operations & Fleet Performance

Commitments made by this letter: None

Attachment: Request for Exemption from Specific Requirements in New 2023 Security Rule

Reference: 1. Letter from D. Lawrence (Dominion Energy Virginia) to U.S. Nuclear Regulatory Commission, "Virginia Electric and Power Company North Anna Power Station Units 1 and 2 Request for Exemption from Enhanced

Weapons, Firearms Background Checks, and Security Event
Notifications Implementation”, dated November 30, 2023.
(ML23334A243)

cc: U. S. Nuclear Regulatory Commission
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Regional Administrator
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Serial No. 23-299A

Attachment

Request for Exemption from Specific Requirements in New 2023 Security Rule

**North Anna Power Station Units 1 and 2
Virginia Electric and Power Company**

A. BACKGROUND

On March 14, 2023, the Nuclear Regulatory Commission (NRC) issued a Final Rule entitled “Enhanced Weapons, Firearms Background Checks, and Security Event Notifications.”¹ This final rule became effective April 13, 2023, with a compliance date of January 8, 2024. The final rule contains several new elements such as:

- New terminology and associated requirements covering “conditions adverse to security”
- New definitions of the terms “contraband” and “time of discovery” in 10 CFR 73.2
- New point of contact requirements with the Federal Aviation Administration (FAA)
- Changes to reporting requirements applicable to security events from:
 - 1-hour notifications and 24-hour recording of security events to 1-hour, 4-hour, 8-hour notifications and 24-hour recording of security events
 - Codifies the accelerated call to the NRC from NRC Bulletin 2005-02 to a new 15-minute notification.

Concurrently with the publication of the final rule, the NRC issued the following Regulatory Guides (RGs) to support the implementation requirements set forth in the final rule:

- 5.62, “Physical Security Event Notifications, Reports, and Records,” Revision 2
- 5.86, “Enhanced Weapons Authority, Preemption Authority, and Firearms Background Checks,” Revision 0
- 5.87, “Suspicious Activity Reports,” Revision 0

During an August 23, 2023, public meeting, the NRC recognized there are ambiguities and inconsistencies contained in the final rule language and associated guidance. The discussed revision date for publication of clarifying guidance was April 2024, which is three months after the compliance date of January 8, 2024. Additionally, the NRC recognized the need for rulemaking to address some issues with the final rule language.

¹ “Enhanced Weapons, Firearms Background Checks, and Security Event Notifications; Final rule and guidance,” 88 Fed. Reg. 15864 (March 14, 2023).

Accordingly, Virginia Electric and Power Company (Dominion Energy Virginia) is requesting an exemption from the specific requirements in 10 CFR Part 73, Subpart T, "Security Notifications, Reports, and Recordkeeping," 10 CFR 73.1200(a) through 10 CFR 73.1200(t), "Notification of Physical Security Events," 10 CFR 73.1205(a)(1) through 10 CFR 73.1205(e), "Written Follow-up Reports of Physical Security Events," 10 CFR 73.1210(a)(1) through 10 CFR 73.1210(h), "Recordkeeping of Physical Security Events," and 10 CFR 73.1215(a) through 10 CFR 73.1215(f), "Suspicious Activity Reports," until the later of December 31, 2024, or 180 days after publication of the final RGs associated with the final rule.

Dominion Energy Virginia is requesting an exemption from using the definitions for the terms "Contraband," and "Time of Discovery," as recently revised in 10 CFR 73.2, "Definitions," until the later of December 31, 2024, or 180 days after publication of the final RGs. The exemption would not apply to the definitions of those terms that were in effect prior to the issuance of the 2023 revisions.

Dominion Energy Virginia is not requesting an extension to the compliance date for specific requirements in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73, Subpart B, "Enhanced Weapons, Preemption, and Firearms Background Checks," described in 10 CFR 73.15, "Authorization for Use of Enhanced Weapons and Preemption of Firearms Laws," and 10 CFR 73.17, "Firearm Background Checks for Armed Security Personnel."

B. BASIS FOR EXEMPTION REQUEST

10 CFR 73.5 allows the Commission to grant exemptions from the requirements of Part 73 "as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest." As explained below, this exemption request meets the criteria provided in 10 CFR 73.5.

Dominion Energy Virginia has identified several issues in the final rule and the supporting draft RGs associated with the final rule that require clarification from the NRC in order to successfully implement the requirements. Based on an NRC public meeting held on August 23, 2023, the NRC is currently developing a resolution for these issues and addressing RG revisions. The NRC stated that additional guidance will be issued in April 2024, three months after the final rule compliance date of January 8, 2024. Without additional guidance, enforcement direction, or the approval of this exemption, it is likely that Dominion Energy Virginia will need to make changes to its physical security plans and processes twice – once to come into compliance with its own interpretation of the final rule (without the benefit of the additional guidance being developed by NRC), and again after the additional guidance is issued. The ambiguity and inconsistency created

by the final rule language and existing guidance, which is described below, could result in unnecessary confusion and distraction from the current high level of assurance provided by Dominion Energy Virginia's existing physical security programs. Thus, implementation of the final rule prior to issuance of additional clarifying guidance, at a minimum, is not in the best interest of the public. The following are several issues that have been identified as examples:

1. CONDITIONS ADVERSE TO SECURITY

The introduction of the term "conditions adverse to security" within 10 CFR 73.1210 is undefined and ambiguous. Dominion Energy Virginia has established, as required, a formal Corrective Action Program in accordance with 10 CFR Part 50, Appendix B, Criterion XVI. NEI 16-07, *Improving the Effectiveness of Issue Resolution to Enhance Safety and Efficiency*, provided recommended approaches to the industry to enhance corrective actions and facilitate enhanced organizational focus on conditions affecting safety and reliability. As a result, Dominion Energy Virginia has developed procedures/processes to determine conditions adverse to quality related to the security organization, (e.g., Condition Adverse to Regulatory Compliance).

- Dominion procedure PI-AA-200, Corrective Action, defines specific events, situations, and occurrences that are to be treated as conditions adverse to quality. Security-related items are included.

Given the robust nature of the Corrective Action Program, the duplication of procedures and/or revision of procedures to accommodate a new term is unnecessary, adds burden, and provides no increased value, safety margin or improvements to the security programs or the Corrective Action Program.

2. DEFINITIONS IN 10 CFR 73.2

New definitions in § 73.2 expand existing definitions provided in NRC endorsed, NEI 03-12, "Template for the Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, [and Independent Spent Fuel Storage Installation Security Program]," Revision 7 and RG 5.76, "Physical Protection Programs at Nuclear Power Reactors." Dominion Energy Virginia has used the existing definitions to design its Security Plan² and associated programs and procedures.

² The Security Plan is a Fleet plan titled, "Millstone, North Anna and Surry Power Stations' Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Independent Spent Fuel Storage Installation Security Program"

Examples of definitions with issues include:

- *Contraband*: Specifically, the *exempli gratia* or “e.g.” parenthetical describing “other dangerous materials” as specifically including “disease causing agents” requires licensees to protect against circumstances beyond the current Design Basis Threat (DBT) as described in 10 CFR 73.1. The application of this expanded definition would require changes to methods of compliance with the requirements of 10 CFR 73.55(g)(1)(ii)(B). Paragraphs (g)(1)(ii)(B) requires (emphasis added):

§ 73.55(g) *Access controls.*

- (i) Consistent with the function of each barrier or barrier system, the licensee shall control personnel, vehicle, and material access, as applicable, at each access control point in accordance with the physical protection program design requirements of § 73.55(b).

(ii) Where vehicle barriers are established, the licensee shall:

(B) Search vehicles and materials for contraband or other items which could be used to commit radiological sabotage in accordance with paragraph (h) of this section.

§ 73.55(h) *Search programs.*

(1) The objective of the search program is to detect, deter, and prevent the introduction of firearms, explosives, incendiary devices, or other items which could be used to commit radiological sabotage. To accomplish this the licensee shall search individuals, vehicles, and materials consistent with the physical protection program design requirements in paragraph (b) of this section, and the function to be performed at each access control point or portal before granting access.

(2) Owner controlled area searches.

(iv) Vehicle searches must be accomplished through the use of equipment capable of detecting firearms, explosives, incendiary devices, or other items which could be used to commit radiological sabotage, or through visual and physical searches, or both, to ensure that all items are identified before granting access.

(3) Protected area searches. Licensees shall search all personnel, vehicles and materials requesting access to protected areas.

(i) The search for firearms, explosives, incendiary devices, or other items which could be used to commit radiological sabotage shall be accomplished through the use of equipment capable of detecting these items, or through visual and physical searches, or both, to ensure that all items are clearly identified before granting access to protected areas. The licensee shall subject all persons except official Federal, state, and local law enforcement personnel on official duty to these searches upon entry to the protected area. Armed security officers who are on duty and have exited the protected area may re-enter the protected area without being searched for firearms.

§ 73.55(g) uses the term contraband, while § 73.55(h) uses terminology consistent with that found in the definition of contraband in NEI 03-12 (and RG 5.76). The specific inclusion of “disease causing agents” in the new regulatory definition of contraband will require licensees to modify their programs and procedures describing the methods of compliance with paragraph § 73.55(g). Dominion Energy Virginia understands that the NRC is considering potential resolutions for this issue, but until further guidance is issued, or rulemaking occurs, compliance with this requirement as written is not feasible without making significant changes to the physical security program.

- *Time of Discovery*: Specifically, the term “cognizant individual” and “is considered anyone who, by position, experience, and/or training, is expected to understand that a particular condition or event adversely impacts security.” Currently, security plans incorporate the definition for Time of Discovery that is found in NEI 03-12 and RG 5.76. Specifically, this definition states, “a supervisor or manager makes a determination that a verified degradation of a security safeguards measure or a contingency situation exists,” to establish T=0 for a security related event.

The new definition expands the pool of personnel previously used by licensees to determine T=0 for an event due to the undefined nature of “position, experience, and/or training.” Additionally, the broader nature and lower threshold for recognition of something that simply “adversely impacts security,” versus “recognition of verified degradation of a security safeguards measure or a contingency situation” contributes to the expansion of pool of personnel. Dominion Energy Virginia is confident the term in NEI 03-12 and RG 5.76 is the appropriate threshold for T=0 for security related events. The application of the new definition will require Dominion Energy Virginia to change current security programs to incorporate the expanded and revised training modules onsite for general plant employees, (potentially with INPO and the NANTeL training course they facilitate), and the responsibility for implementation of the expanded training across a broad spectrum of personnel at the station.

3. FEDERAL AVIATION ADMINISTRATION (FAA) LOCAL CONTROL TOWER POINT OF CONTACT

10 CFR 73.1215 establishes reporting requirements for suspicious activities involving aircraft to a licensee’s local FAA control tower. Specifically, licensees are required to:

- Establish a point of contact with their local FAA control tower, and
- Document the point of contact in written communication procedures.

Dominion Energy Virginia contacted Air Traffic Control Tower personnel at Richmond International Airport (RIC) who confirmed that RIC Air Traffic Control Tower is an appropriate FAA contact for suspicious activity alerts. Draft guidance in RG 5.87 recommends that Licensees contact their local Flight Standards District Office to report suspicious activity and defer to FAA recommended points of contact, if provided, even if that differs from NRC guidance. However, until final issuance of RG 5.87, Dominion Energy Virginia is requesting an exemption to avoid non-compliance to the requirement of establishing and documenting a FAA local control tower point of contact. Dominion Energy Virginia retains the ability to contact both RIC Air Traffic Control and the Richmond Flight Standards District Office. Moving towards the January 8, 2024, implementation date without full clarity on the final rule does not add additional safety margin to the protection or operation of North Anna Power Station (NAPS).

4. REGULATORY GUIDES

Examples of clarification needed in the supporting RG 5.62, Revision 2, "Physical Security Event Notifications, Reports, and Records" include:

4-hour vs. 15-minute notification requirement:

- § 73.1200(e)(1)(iii) and (iv) requires a 4-hour notification for attempted introduction of contraband or actual introduction of contraband into a PA, VA, or MAA.
 - The definition of contraband contains the term "incendiaries."
- § 73.1200(a) requires a 15-minute notification for hostile actions.
 - RG 5.62, Rev 2, Section 7.1, page 24, provides examples of hostile actions:
 - (4) The discovery of unauthorized explosive materials, incendiary materials, or an improvised explosive device within the licensee's site boundary.
- The code language requires a 4-hour notification for an incendiary device at or inside the PA, VA, or MAA. The RG drives the licensee to a 15-minute notification for an incendiary device at the site boundary, which is further away from safety-related equipment than "within the site boundary".

The notification conflict the RG introduced between a 15- minute and 4-hour notification is burdensome, confusing, and makes the consistency and success for this notification unpredictable. Station personnel are trained in referencing published RGs, station procedures and guidance, and other industry documents as a best practice to support the accuracy of determination of notification events.

The inconsistency created by RG 5.62 unnecessarily creates the potential for confusion and human performance errors.

4-hour notification vs. 24-hour recording of "lost or uncontrolled weapon":

- § 73.1200(e)(1)(v) requires a 4-hour notification for a lost or uncontrolled weapon.
- § 73.1210(f) requires recording within 24-hours "physical security events or conditions that decreases the effectiveness of the physical security program."

- RG 5.62, Rev 2, Section 18.2, page 38, provides examples of the “Recordable Events and Conditions Regarding Decreases in Effectiveness”, that 73.1210(f) requires. The RG includes an event involving the loss of control of an authorized security weapon within a PA, VA, MAA, or CAA.
- The conflict between the notification and recording of a lost or uncontrolled weapon only exists because of the regulatory guidance in RG 5.62. As a best practice, and to support accurate determination of events requiring notification, station personnel are trained in referencing published RGs, station procedures and guidance, and other industry documents. Additional clarity is needed to support the implementation of notifications and recordkeeping in a consistent and successful manner.

Malevolent intent discussion:

- 10 CFR 73.1200 only refers to the term “malevolent intent” in § 73.1200(q)(2) as *exempli gratia* or “e.g.” parenthetical describing a circumstance where a licensee may desire to retract a previous physical security event notification.
 - RG 5.62, Rev 2, Section 2, page 21, titled, “Malevolent Intent and Credible Bomb Threat Considerations,” states the NRC’s position that only government officials have the necessary resources and qualifications to determine whether malevolent intent was present in a security event.
 - During the May 2023 and August 2023 public meetings, the NRC was unable to consistently describe when licensees were capable of this determination or when licensees were required to have government officials make this determination.
 - Within the “NRC Response to Public Comments,” ML16264A004,³ comment K-21 contains the discussion regarding “credible,” and puts into context the circumstance of the NRC position as it relates to the determination of malevolent intent.
 - It is clear that as of the publication date of March 2023, the discussion revolves around the 15-minute notification requirements, and not generally across all security related events.

³ NRC Response to Public Comments, “Enhanced Weapons, Firearms Background Checks, and Security Event notifications Rule”, NRC-2011-0018; RIN 3150-AI49

- Dominion Energy Virginia is aligned that in certain circumstances external government agencies would be the most appropriate to determine malevolent intent, (e.g., credible bomb threat, credible threat). However, the capability to determine intent as it relates to identifying Human Performance errors, and determining Trustworthy and Reliability for Access purposes should remain with the licensee.
- The lack of clarity of the scope and/or intent of when it is appropriate for external government officials to determine malevolent intent creates ambiguity. Clarity is needed to prevent unnecessary changes to security programs and procedures, such as access authorization, to incorporate a process to await investigation results from NRC's Office of Investigations (OI), the intelligence community, or a federal, state, or local law enforcement agency.

C. CONSIDERATIONS FOR EXEMPTION

As highlighted in the examples above, meeting a compliance date of January 8, 2024, without full clarity on key parts of the final rule would result in an inadequate implementation. Unknown success path towards compliance of the final rule, as written, and conflict and confusion related to the published, publicly available, stated positions of the NRC, are key reasons for this request. Implementation prior to the issuance of the final RGs could create a situation where the modification of security plans and procedures would be required at least twice, based on interpretation of this new rule. Dominion Energy Virginia is requesting the following considerations be taken into account during review of this request:

- Dominion Energy Virginia security plan implements the requirements of 10 CFR 73.71, "Reporting of Safeguards Events," for reporting the suspension of security measures.
- Dominion Energy Virginia will continue to comply with security event reporting, as previously required in 10 CFR 73.71, "Reporting of Safeguards Events," and Appendix G to Part 73, "Reportable Safeguards Events."
- NAPS will use the definitions for the terms "Contraband" and "Discovery (time of)," in its current site Security Plan consistent with how these terms are currently defined in RG 5.76, Revision 1, "Physical Protection Programs at Nuclear Power Reactors."
- Dominion Energy Virginia is currently implementing a formal Corrective Action Program and has identified Conditions Adverse to Quality as they relate to Security Programs as items that are Conditions Adverse to Regulatory Compliance.
- Dominion Energy Virginia can currently contact the FAA, RIC Control Tower, at 804-222-5141.

- Dominion Energy Virginia is currently capable of making voluntary reports of suspicious activities (SY-AA-105, Security Safeguards/Cyber Event Reportability), and this will not change in the interim until the new compliance date.
- The burden associated with rework for Dominion Energy Virginia is unnecessary while awaiting final publication of the associated RGs. Several examples of where rework will be required are:
 - Revisions of associated procedures/processes, job aids, training materials and lesson plans that are used to describe and elaborate on reporting requirements.
 - Coordination of work management and resources to align with station outage schedule(s). There are no outages occurring at the end of 2023; however, there is one outage scheduled for 2024.
 - The re-training of impacted station personnel with updated information contained within the revised guidance documents:
 - Security
 - Regulatory/Compliance
 - Emergency Response
 - Radiation Protection
 - Operations – Accredited Training Program, requiring the use of the Systematic Approach to Training process. Examples of elements that drive the number of available weeks to train operators within a year are:
 - Dominion Energy Virginia executes seven cycles per year.
 - Dominion Energy Virginia requires five weeks for each cycle of training, based on the number of operating crews, and licensed operators.
 - Dominion Energy Virginia is required to administer an exam cycle for licensed operators each year.
 - Dominion Energy Virginia is required to incorporate certain elements within the two-year training cycle that include outage applicable objectives (including, but not limited to: core changes, plant modifications, Lower Mode operations).

D. JUSTIFICATION FOR EXEMPTION

Based on NRC's projected timeline for completion of revisions to the applicable RGs associated with this final rule, Dominion Energy Virginia is requesting a new compliance date of December 31, 2024, or 180 days after publication of the final RGs, whichever is later.

As stated above, Dominion Energy Virginia will continue to implement the Security Plan as documented. Since it has been reviewed and approved by the NRC, Dominion Energy Virginia's Security Plan provides reasonable assurance of safety and security. The delay in implementation of the final rule will not impact proper implementation of the current Security Plan and will ensure that the final rule is effectively implemented. Thus, granting of this exemption will not endanger the life or property or common defense and security.

Implementation of the final rule without further interface, clarity, and refined guidance may result in unintended consequences which could reduce the effectiveness of the current Security Plan. Therefore, it is in the public's interest that NAPS's Security Plan and associated procedures/processes comprehensively and accurately implement the regulation and guidance documents once resolution is obtained for identified issues.

The granting of this exemption would not violate the Atomic Energy Act, as the compliance date for the final rule is not required or specified in the AEA as amended, any provisions of the Commission's regulations, or any other legally binding requirements imposed by the Commission.

Thus, issuance of this exemption request would be consistent with 10 CFR 73.5 because it is "authorized by law and will not endanger life or property or the common defense and security and [is] otherwise in the public interest."

E. ENVIRONMENTAL ASSESSMENT

Dominion Energy Virginia is requesting an exemption from the compliance date of January 8, 2024, for the Enhanced Weapons, Firearms Background Checks, and Security Event Notifications. The following information is provided in support of an environmental assessment and finding of no significant impact for the proposed exemption. Dominion Energy Virginia has determined that the exemption involves no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite; that there is no significant increase in individual or cumulative public or occupational radiation exposure; that there is no construction impact; and there is no significant increase in the potential for or consequences from a radiological accident. Accordingly, the proposed one-time exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of this proposed exemption request.