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NUCLEAR REGULATORY COMMISSION

[NRC-2014-0002]

Emergency Planning Exemption Requests for Decommissioning Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim staff guidance; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Interim Staff Guidance (ISG) NSIR/DPR-ISG-02, "Emergency Planning Exemption Requests for Decommissioning Nuclear Power Plants," May 11, 2015. This document provides guidance for NRC staff to produce clear and consistent reviews of requests for exemptions and license amendments for defueled station emergency plans submitted by licensees after permanent cessation of operations.

ADDRESSES: Please refer to Docket ID NRC-2014-0002 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2014-0002. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC’s Agencywide Documents Access and Management System (ADAMS):**

You may obtain publicly available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “[ADAMS Public Documents](#)” and then select “[Begin Web-based ADAMS Search](#).” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The draft NSIR/DPR-ISG-02, the final NSIR/DPR-ISG-02, the public comments, and the NRC staff’s responses to public comments are available in ADAMS under Accession Nos. ML13304B442, ML14106A057, ML14225A717, and ML14230A346.

- **NRC’s PDR:** You may examine and purchase copies of public documents at the NRC’s PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Michael Wasem, telephone: 301-287-3793, e-mail: Michael.Wasem@nrc.gov, or Michael Norris, telephone: 301-287-3754, e-mail: Michael.Norris@nrc.gov, both of the Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. Discussion.

Currently, licensees of permanently shut down and defueled nuclear power plants are required to maintain emergency plans meeting the same requirements as emergency plans for operating nuclear power plants. Nuclear power plants that have permanently ceased operating

and permanently removed fuel from the reactor vessel, with spent fuel stored in the spent fuel pool and/or in dry cask storage provide less of a risk of radiological releases than operating nuclear power plants. Licensees of these decommissioning plants have historically submitted requests for exemption from emergency preparedness regulations based on this lower risk. The final ISG will be used by NRC staff for future submittals and reflects the experience of NRC staff in the technical review of exemptions requested for the Kewaunee Power Station (KPS), as documented in SECY-14-0066, “Request by Dominion Energy Kewaunee, Inc. for Exemptions from Certain Emergency Planning Requirements” (ADAMS Accession No. ML14072A257), and for the review of proposed changes to the KPS emergency plan and emergency action level (EAL) scheme implementing exemptions as approved by the Commission in Staff Requirements Memorandum (SRM) to SECY-14-0066 ADAMS Accession No. ML14219A366). The final ISG is intended to provide guidance for staff to facilitate the clear and consistent reviews of subsequent requests for exemptions to specific emergency plan requirements of part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR) for a permanently shut down and defueled power reactor, and for license amendments to emergency plans and EAL schemes implementing the specific emergency plan requirements of 10 CFR part 50, as exempted.

Licensees have historically used the exemption process to decrease the burden of maintaining required parts of emergency plans in cases where continued application of the regulation by the licensee is not necessary to achieve the underlying purpose of the regulation. The findings from previous exemption request reviews, along with the results of studies such as NUREG-2161: “Consequence Study of a Beyond-Design-Basis Earthquake Affecting the Spent Fuel Pool for a U.S. Mark I Boiling Water Reactor” (ADAMS Accession No. ML14255A365); NUREG-1738, “Technical Study of Spent Fuel Accident Risk at Decommissioning Nuclear Power Plants” (ADAMS Accession No. ML010430066); and NUREG-1864, “A Pilot Probabilistic Risk Assessment of a Dry Cask Storage System at a Nuclear Power Plant” (ADAMS Accession

No. ML071340012), inform the technical review of exemptions to specific emergency plan requirements of 10 CFR part 50, and license amendments to a licensee's emergency plan and EAL scheme, as exempted.

The Commission directed the staff in SRMs to SECY-0066 and SECY-14-0118, "Request by Duke Energy Florida, Inc., for Exemptions from Certain Emergency Planning Requirements" (ADAMS Accession No. ML14219A444) to proceed with an integrated rulemaking on decommissioning. It is anticipated that this ISG will be replaced by future guidance developed in conjunction with this rulemaking.

II. Public Comments.

A draft ISG was published for public comment in the *Federal Register* on January 10, 2014 (79 FR 1900). The public comment period closed on April 10, 2014. The NRC received 22 comment submissions on the draft ISG from members of the public, non-government organizations, and the nuclear industry. None of the comments received from members of the public supported a reduction in emergency preparedness for decommissioning nuclear power plants. In addition, eight of the submissions from members of the public were directed specifically at decommissioning of a specific licensee. The submission from the Nuclear Energy Institute (NEI) provided editorial comments, comments for clarification, and a request that power reactors undergoing decommissioning need not implement Initiating Conditions PD [permanently defueled]-HU1 and PD-HA1 in the EALs as outlined in NEI 99-01 (Revision 6), "Development of Emergency Action Levels for Non-Passive Reactors" (ADAMS Accession No. ML12326A805). The NRC received six comment submissions from representatives of other non-governmental organizations opposing any reduction in emergency planning and expressing dissatisfaction with the NRC's exemption process.

III. Changes to ISG.

This ISG was revised from the draft that appeared in the *Federal Register* on January 20, 2014, based on public comments, NRC review of the Kewaunee exemption request, and subsequent Commission direction. A summary of the changes follows:

Section 1.0, Purpose, was expanded to include a description of Table 1 (Exemptions for Consideration) and Attachment 1 (Staff Guidance for Evaluation of Permanently Defueled Emergency Plans), and a discussion on how they are to be used by NRC staff. The NRC also added a description of the process to be used for the review of changes to a decommissioning licensee's EALs.

Section 2.0, Scope, was modified to reflect that licensees may submit exemption requests when they notify the NRC of the intent to permanently cease operation. The draft document incorrectly stated that the ISG could only be used after the licensee had certified that the reactor vessel was defueled.

The NRC deleted the term "risk factor" and moved the discussion on risk from Section 3.0, Background, to Section 4.0, Overview of Existing Guidance. A short description of physical security requirements for decommissioning nuclear power reactors was added to Section 3.0.

Table 1 was revised to reflect potential exemption requests based on the Commission's SRM dated August 7, 2014, for SECY-14-0066.

Attachment 1 was replaced in its entirety by a table of the applicable guidance contained in NUREG-0654/FEMA-REP-1 (Revision 1), "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants" (ADAMS Accession No. ML040420012).

IV. Congressional Review Act.

NSIR/DPR-ISG-02 is a rule as defined in the Congressional Review Act (5 U.S.C. §§ 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

V. Backfitting and Issue Finality.

The NRC is issuing interim guidance for the NRC staff regarding its review of requests from licensees of decommissioning nuclear power plants for exemptions from specific emergency plan requirements in 10 CFR part 50 and license amendments to permanently defueled emergency plans. Issuance of the ISG does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52. The NRC's position is based upon the following considerations.

1. *The ISG positions do not constitute backfitting, inasmuch as the ISG is internal guidance to NRC staff.*

The ISG provides interim guidance to the staff on how to review certain requests for exemption or license amendments. Changes in internal staff guidance are not matters for which applicants or licensees are protected under 10 CFR 50.109 or issue finality provisions in 10 CFR part 52.

2. *The staff has no intention to impose the ISG on existing nuclear power plant licenses or holders of regulatory approvals either now or in the future (absent a voluntary request for*

change from the licensee or holder of a regulatory approval).

The staff does not intend to impose or apply the positions described in the ISG to existing (already issued) licenses (e.g., operating licenses and combined licenses) and regulatory approvals. Hence, the ISG – even if considered guidance that is within the purview of the issue finality provisions in 10 CFR part 52 – need not be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the staff seeks to impose a position in the ISG on holders of already issued licenses in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must make the showing as set forth in the Backfit Rule, or address the criteria for avoiding issue finality as described in the applicable issue finality provision, as applicable.

3. Backfitting and issue finality do not – with limited exceptions not applicable here – protect current or future applicants.

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR part 52. This is because neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52 – with certain exclusions discussed below – were intended to apply to every NRC action that substantially changes the expectations of current and future applicants.

The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (e.g., an early site permit) and/or NRC regulatory approval (e.g., a design certification rule) with specified issue finality provisions. The staff does not, at this time, intend to impose the positions represented in the ISG in a manner that is inconsistent with any issue finality provisions.

If, in the future, the staff seeks to impose a position in the ISG in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

Dated at Rockville, Maryland, this 11th day of May, 2015.

For the Nuclear Regulatory Commission.

Robert J. Lewis, Director,
Division of Preparedness and Response,
Office of Nuclear Security and Incident Response.

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