

January 17, 2017

The Honorable Stephen Burns
Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Chairman Burns,

I am writing to express my concern about the slow pace of the NRC's current efforts to update two regulatory guides related to the protection of US reactors from terrorist attack: Regulatory Guide 5.69, "Guidance for the Application of a Radiological Sabotage Design-Basis Threat in the Design, Development and Implementation of a Physical Security Program that Meets 10 CFR 73.55 Requirements," and Regulatory Guide 5.77, "Insider Mitigation Program."

Updating these two guides, which have not been revised since 2007 and 2009, respectively, is long overdue. The NRC staff decided in July 2015 to update RG 5.69 in order to add "clarifying language regarding technical matters," and apply "lessons learned from inspection activities and operating experience ... and current threat data."¹ These are all important revisions and should be incorporated into the guidance as soon as possible.

However, it has been over a year since the draft updates were provided to cleared stakeholders for review, and the end does not appear to be in sight. Finalizing the revisions has been unnecessarily delayed due to extensive, persistent, and—in my view—unreasonable objections raised by the Nuclear Energy Institute (NEI) and the power reactor licensees to the changes proposed by the NRC staff.

As a participant in the ongoing series of stakeholder interactions on the updates to these guides, it is apparent to me that the process is failing to meet the objective of ensuring "the efficient use of staff resources in developing guidance to applicants and licensees" listed in NRC Management Directive 6.6, "Regulatory Guides." According to MD 6.6, the normal process for regulatory guide updates involves no more than two public stakeholder meetings and two rounds of comments prior to finalization.

In contrast, during the RG 5.69 and 5.77 update process, there have been at least eight stakeholder meetings (including the June 23 Commission briefing), and several rounds of written comments and revised drafts. And because the Commission has decided that the updates to the two guides require its review and approval, additional revisions and associated delays will be likely even after the staff produces a final draft.

¹ "Regulatory Analysis, Regulatory Guide 5.69." July 2, 2015. ADAMS accession number ML15166A169.

The root cause of this failure to meet the efficiency objective appears to be a perceived need by the NRC's leadership for the agency to reach consensus with the licensees on every technical issue in the two documents, even when the industry positions violate common sense. However, the NRC has no obligation to obtain the regulated industry's approval before taking actions needed to fulfill its statutory requirements to ensure public health, safety, and security. Quite the contrary, the NRC must make decisions based on the best technical and policy judgments of its staff. Although the staff should and does give due consideration to comments from the industry and other external stakeholders, the process should not be a negotiation.

The Office of Nuclear Security and Incident Response plays a critical role in providing assurance that US nuclear plants are secure from terrorist attacks. Given the budget pressure that the NRC is currently experiencing, it cannot afford to allow its staff to waste time in fruitless and repetitive meetings. I urge the Commission to direct the staff to provide final drafts for its review as soon as possible—and not to continue to chase a consensus with the industry that may be unattainable. On positions where the staff and the industry continue to disagree, the commissioners should take the responsibility of making the final calls. I note that in the speech you delivered today at the Nuclear Energy Agency in Paris, you said that

“While regulators must listen to input on all sides, they must also guard against indecisiveness. After we listen, engage and debate, we must make the decision. And it may be a decision that does not make all stakeholders happy...”

I agree, and I believe it is time for you and the other commissioners to make the necessary decisions on moving forward with the security regulatory guide updates. I would be pleased to meet with you and your staff to discuss this matter.

Sincerely,

Edwin Lyman, PhD
Senior Scientist, Global Security Program
Union of Concerned Scientists

cc: Victor McCree, EDO
cc: Brian Holian, NSIR