

Position

When implementing Order EA-12-049, changes will be made to the physical plant, procedures, and processes. These changes have potential impacts both within and outside the design-basis of the plant (e.g., Extended Loss of All AC Power [ELAP]). To the extent a change impacts the plant/actions during design-basis conditions, those impacts must be evaluated in accordance with the applicable change control requirements (e.g., 10 CFR 50.59, 10 CFR 50.54(p), or 10 CFR 50.54(q)) and the applicable program documents updated (e.g., Technical Specifications, Security Plan, Fire Protection Program).

To the extent the change only impacts the plant/actions during beyond design-basis conditions/emergencies, these change control requirements do not apply and the change would screen out. This is consistent with the guidance in NEI 96-07, Rev. 1 for changes that are outside the design-basis. In addition, the applicable program documents (e.g., fire protection, security, and emergency) would not be changed. Any necessary deviations from design-basis requirements would be implemented in accordance with the authority provided in 10 CFR 50.54(x), 10 CFR 73.55(p), and 10 CFR 72.32(d).

Basis

NRC Order EA 12-049 contains the following:

Guidance and strategies required by this Order would be available if the loss of power, motive force, and normal access to the ultimate heat sink to prevent fuel damage in the reactor and SFP affected all units at a site simultaneously.

These conditions are outside the licensing and design-basis set of conditions for currently licensed plants. As discussed in the Order, the evaluated beyond-design-basis external event impacts all units at a multi-unit site simultaneously, and therefore a staggered ELAP is not required to be considered with respect to the mitigating strategies. Although, the FLEX strategies are designed for this specific set of beyond design-basis conditions, the FLEX strategies are “diverse and flexible” such that they can be implemented for many different conditions. This is due to it not being possible to predict the exact site conditions following a beyond design-basis external event or the duration of the associated coping and recovery.

During the development of the guidance to implement Order EA-12-049, it was realized that many of the actions taken in response to a beyond design-basis external event would not be compatible with the design and licensing basis or actions typically taken during normal operations and design-basis events. To address this, NEI 12-06, Revision 0 provides the following guidance concerning the regulatory treatment of changes associated with implementation of Order EA-12-049.

11.4.4 Regulatory Screening/Evaluation

NEI 96-07, revision 1, and NEI 97-04, revision 1 should be used to evaluate the changes to existing procedures as well as to the FSG to determine the need for prior NRC approval. Changes to procedures (EOPs or FSGs) that perform actions in response events that exceed a site's design basis should, per the guidance and examples provided in NEI 96-07, Rev. 1, screen out. Therefore, procedure steps which recognize the beyond-design-basis ELAP/LUHS has occurred and which direct actions to ensure

core cooling, SFP cooling, or containment integrity should not require prior NRC approval.

To the extent the change only impacts the plant/actions during beyond design-basis conditions, the change is not affecting a design function, method of performing or controlling a function, or an evaluation that demonstrates that intended functions will be accomplished. The NEI 12-06 view that changes to procedures for beyond design-basis events screen out in a 50.59 review, is consistent with the Statements of Consideration for the 10 CFR 50.59 Rulemaking provided in Federal Register/Vol. 64, No. 191/Monday, October 4, 1999 which stated:

The Commission has modified the proposed rule language for "change" to be responsive to the issues raised by these comments. In particular, for comment (a), the Commission has incorporated into the definition of "change" the phrase "that affects design function, method of performing or controlling a function, or an evaluation that demonstrates that intended functions will be accomplished."

The definition of change language will allow licensees to eliminate the need to further assess specific changes against the criteria in the rule because the nature of the change would never meet the criteria of the rule and require prior NRC review before implementation (known in the industry as a screening review).

This is also consistent with NRC TIA 2009-011 which states in part:

Where procedures are changed to address actions for severe accidents and only affect the beyond design basis unit, the guidance in NEI 96-07 applies in that a 10 CFR 50.59 evaluation is not required. When the procedure change addresses actions for severe accidents involving a unit that is not part of the event, then 10 CFR 50.59 applies regardless of whether the action is attempting to provide mitigation actions to help the unit in the severe accident. This ensures that the 10 CFR 50.59 requirements for considering the risk and consequences of the action are evaluated in determining whether prior NRC approval is needed.

Therefore, for a single Unit site any procedures/guidance developed for the Orders that is intended to be used when the facility is within design-basis, requires the appropriate change process (e.g. 50.59) to be used. Additionally, the impacts of any facility modifications on design-basis conditions must be evaluated. To the extent the change only impacts the plant/actions during beyond design-basis conditions these normal change control requirements do not apply.

For a Multi-unit site TIA 2009-011 stated "When the procedure change addresses actions for severe accidents involving a unit that is not part of the event, then 10 CFR 50.59 applies regardless of whether the action is attempting to provide mitigation actions to help the unit in the severe accident." This is true for a situation in which the authority provided in 10 CFR 50.54(x), 10 CFR 73.55(p) and 10 CFR 72.32 (d) is not utilized.

Any necessary deviations from the requirements applicable during design-basis conditions (e.g., Technical Specifications, Security Plan, Fire Protection Program, or Emergency Plan) would be implemented in accordance with the authority provided in 10CFR50.54(x), 10 CFR 73.55(p), and 10CFR72.32(d). These requirements provide broad authority to the licensee as discussed

in the Statements of Consideration for the 50.54(x) Rulemaking in Federal Register I Vol. 48, No. 64 / Friday, April 1, 1983:

The Commission had both the General Prudential Rule and the FAA rule in mind when it framed the proposed NRC rule. Further, it is clear that Congress believes that licensees have authority to take whatever action is necessary to respond to emergencies involving an imminent threat to public health and safety. H.R. Rep. No. 97-884, 97th Cong., 2d Sess. 38 (1982).

This authority is meant to be flexible and not tied to any specific set of emergency conditions.

A commenter suggested that use of the rule be tied to the "general emergency" emergency classification, i.e., that the rule should apply only when a general emergency has been declared by the licensee. This comment was not accepted. Emergencies can develop rapidly. Use of the rule should not be encumbered by administrative prerequisites.

These actions may be preplanned and described in plant documents (e.g., procedures or FLEX Support Guidelines) to the extent the actions are implemented during beyond design-basis/accident conditions. The acceptability of application of authority such as 10CFR50.54(x) and the preplanning of its use is consistent with the letter from Janice E. Moore, Deputy Assistant General Counsel, Office of the General Counsel, to Mr. A. Edward Scherer dated February 5, 1999 (Attachment I):

Neither the regulation nor the accompanying Statement of Considerations...address... the possibility of taking a unit at a multi-unit site that is currently operating within its design and licensing basis to a condition that is beyond its design and licensing basis in order to protect another unit...On the other hand, the Commission was emphatic that the "whole purpose of the proposed amendments [to add section 50.45(x) was] to provide flexibility in situations that [could not] be anticipated." 48 *Fed. Reg.* at 13968. The Commission went on to specifically observe that "any attempt to define in more detail the precise circumstances under which a deviation would be permissible is bound to exclude a circumstance where deviation might be entirely appropriate." *Id.* Thus, as a broad proposition, we believe that although 10 C.F.R. § 50.54(x) does not expressly provide for the type of action you suggest, such action is not prohibited in appropriate circumstances...

...Notwithstanding that this regulation thus anticipated that these matters would likely be decided at the time of need, prudent regulatory action by both the NRC and licensees has encouraged the development of preplanned measures to the extent that situations can be predicted in accident procedures and guidelines. The staff has, nonetheless, noted its expectation that, as a general matter, while actions may have been pre-planned, their implementation in the immediate aftermath of a specific accident would likely involve the invocation of 10 C.F.R. § 50.54(x)...We also note that to the extent that such pre-planned measures may involve current changes to a facility or procedures described in the Final Safety Analysis Report for a given facility, as updated, it is incumbent upon a licensee to follow the provisions of 10 C.F.R. § 50.59."

The entry into a beyond design-basis/accident situation by itself does not justify blanket application of these allowed regulatory deviations. The action must be needed to:

- protect the public health and safety,
- no action consistent with license conditions and TSs that can provide adequate or equivalent protection is apparent, and
- there is inadequate time for Technical Specifications (TSs) or license conditions amendments by the NRC.

Although, the FLEX strategies are designed for a specific set of beyond design-basis conditions, the FLEX strategies are “diverse and flexible” such that they can be implemented for many different conditions, as it is not possible to predict the exact site conditions following a beyond design-basis external event. As a result, the specific actions that will be required to be taken are not known and TS or license condition amendments are not necessary for changes to the physical plant, procedures, and processes that will only be implemented during a beyond design-basis external event.

Attachment I



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