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March 31, 2016

Ms. Cindy Bladey
Office of Administration
Mail Stop: OWFN-12-H08
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

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81 FR 10686

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Subject: Comments Concerning Draft Regulatory Issue Summary 2016-XX, "*Clarification on the Implementation of Compensatory Measures for Protective Strategy Deficiencies or Degraded or Inoperable Security Systems, Equipment, or Components*" (81FR10686, dated March 1, 2016, Docket ID NRC-2016-0043)

This letter is being submitted in response to the U.S. Nuclear Regulatory Commission's (NRC's) request for comments concerning draft Regulatory Issue Summary 2016-XX, "*Clarification on the Implementation of Compensatory Measures for Protective Strategy Deficiencies or Degraded or Inoperable Security Systems, Equipment, or Components*," published in the *Federal Register* (i.e., 81FR10686, dated March 1, 2016).

The NRC is issuing this RIS to remind licensees of the requirement to implement compensatory measures, supported by a site-specific analysis, to ensure that licensees maintain, at all times, the capability to detect, assess, interdict, and neutralize threats as identified in NRC regulations. Compensatory measures must be implemented for degraded or inoperable security systems, equipment, or components, and for protective strategy deficiencies identified during performance evaluation exercises and drills.

Exelon Generation Company, LLC (Exelon) appreciates the opportunity to comment on this draft RIS and offers the attached comments for consideration by the NRC. In addition, Exelon supports the comments submitted by the Nuclear Energy Institute (NEI) on behalf of the industry related to the subject RIS.

If you have any questions or require additional information, please do not hesitate to contact Richard Gropp at (610) 765-5557.

Respectfully,

D. P. Helker

David P. Helker
Manager, Licensing and Regulatory Affairs
Exelon Generation Company, LLC

Attachment: Response to Request for Comments

SUNSI Review Complete
Template = ADM - 013
E-RIDS= ADM-03

Add= D. Cardenas (dxc7)
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ATTACHMENT

Response to Request for Comments

Draft Regulatory Issue Summary 2016-XX, *"Clarification on the Implementation of Compensatory Measures for Protective Strategy Deficiencies or Degraded or Inoperable Security Systems, Equipment, or Components"*

(NRC Docket ID NRC-2016-0043)

Comments Concerning Draft Regulatory Issue Summary 2016-XX, "Clarification on the Implementation of Compensatory Measures for Protective Strategy Deficiencies or Degraded or Inoperable Security Systems, Equipment, or Components"

Exelon Generation Company, LLC (Exelon) appreciates the opportunity to comment on this draft Regulatory Issue Summary (RIS) and offers the comments below for consideration by the U.S. Nuclear Regulatory Commission (NRC).

I. Background

This draft RIS is referenced in SECY-16-0018, "Status of Improvements to the Force-on-Force Inspection Program in Response to SRM-SECY-14-088," dated February 25, 2016. In the SECY document, the following discussion is provided:

Compensatory Measures

In SECY-14-0088 the staff recommended issuance of a generic communication clarifying when licensees should apply compensatory measures. Staff had previously identified that some licensees were applying immediate compensatory measures in certain cases where such measures were not required under NRC regulations. Staff has developed a draft RIS on compensatory measures. This draft RIS reiterates the NRC's position on the requirements for implementation of compensatory measures. Consistent with regulatory requirements, compensatory measures must provide a level of protection that is equivalent to the protection that was provided by the equipment, system, or component, before it was degraded or inoperable. Furthermore, they must be implemented within specific timeframes to ensure that the capability to detect, assess, interdict, and neutralize threats to the facility are maintained at all times. Additionally, compensatory measures must be described in the licensees' security plans.

Licensees are not required to immediately implement compensatory measures in all cases. However, they are required to take immediate action to assess any identified deficiency to determine the cause of the deficiency and the impact of the deficiency on the site's protective strategy. Based on this assessment, the licensee must determine if a compensatory measure is required and, if required, whether the compensatory measure must be immediately implemented.

The staff expects that the draft RIS will be issued for public comment in the first quarter of CY 2016, following the NRC's Generic Communications Process. The staff will consider comments received when finalizing the RIS.

The staff expects to issue the final RIS and complete this activity by the end of CY 2016.

II. Comments

The *Federal Register* notice (i.e., 81FR10686) states the following:

The intent of this RIS is to remind addressees of the requirement for implementation of compensatory measures, supported by a site-specific analysis, to ensure that their physical protection program maintains, at all times, the capability to detect, assess, interdict, and neutralize threats, as identified in Section 73.1, "Purpose and Scope," of title 10 of the Code of Federal Regulations (10 CFR). Compensatory measures must be implemented for degraded or inoperable security systems, equipment, or components, and for protective strategy deficiencies identified during performance evaluation exercises and drills. Licensees should use a site-specific analysis, based on all available information, to determine the specific timeframes and measures to compensate for protective strategy deficiencies, or degraded or inoperable security equipment, systems, or components.

The draft RIS contains similar language and states:

The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) to remind addressees of requirements for implementation of compensatory measures supported by a site-specific analysis to ensure their physical protection program maintains, at all times, the capability to detect, assess, interdict, and neutralize threats, as identified in 10 CFR 73.1, "Purpose and scope." Compensatory measures must be implemented for degraded or inoperable security systems, equipment, or components. Additionally, protective strategy deficiencies identified during performance evaluation exercises and drills should be evaluated to determine if these deficiencies meet the criteria for implementation of compensatory measures in accordance with 10 CFR 73.55(o).

Exelon believes that the current language in the draft RIS could be misinterpreted and is perhaps misleading, as it: "...reminds licensees of the requirement to implement compensatory measures, supported by a site-specific analysis...." Exelon is concerned with the use of the term "analysis."

10 CFR Part 73.55(o) states the following:

- (o) Compensatory measures. (1) The licensee shall identify criteria and measures to compensate for degraded or inoperable equipment, systems, and components to meet the requirements of this section.*
- (2) Compensatory measures must provide a level of protection that is equivalent to the protection that was provided by the degraded or inoperable, equipment, system, or components.*
- (3) Compensatory measures must be implemented within specific time frames necessary to meet the requirements stated in paragraph (b) of this section and described in the security plans.*

In reference to the phrase "supported by a site-specific analysis" underlined above, the NRC appears to be adding the need for additional analysis for which there are no specific regulatory

requirements or supporting NRC-endorsed industry guidance on what the analysis would entail. In this situation, Exelon does not consider the use of a RIS as the appropriate mechanism or process for establishing new guidance.

Additionally, the *Federal Register* notice also references "should" (underlined above) as it relates to use of a site-specific analysis for determining specific timelines and measures to compensate for protective strategy deficiencies as well as for degraded or inoperable security equipment, systems, or components. Exelon is requesting further clarification as to whether or not the NRC is inferring that the site-specific analysis is "required" or should be used for determining compensatory measures.

Since there appears to be no regulatory basis for performing the additional analysis, and without some form of specific and standardized guidance, Exelon is concerned that a site-specific analysis used to increase the time to implement compensatory measures could be very subjective and left to interpretation by individual NRC inspectors.

Exelon also requests further clarification if it is the NRC's intent to use the RIS to allow licensees to evaluate a Force-on-Force (FOF) loss or marginal exercise to determine if the failure was the protective strategy, a controller issue, an individual human error, or artificiality or simulation, prior to implementing compensatory measures. Exelon believes that it is acceptable to evaluate all the exercise critique information to make a determination on if and what compensatory measures would be necessary for a FOF loss or marginal exercise.