

DRAFT

NRC Staff Responses to Public Comments on DG-1351: “Disposition of Technical Specifications that are Insufficient to Ensure Plant Safety” *Federal Register 83 FR 31429 (July 5, 2018)*

{This document is provided as draft for discussion at the October 17, 2019, Public Meeting with the Nuclear Energy Institute (Agencywide Documents Access and Management System (ADAMS) Accession No. ML19268A117). A final version of this document will be issued upon issuance of the Regulatory Guide.}

I. INTRODUCTION

This document provides the U.S. Nuclear Regulatory Commission (NRC) staff’s responses to written comments received on Draft Guide (DG)-1351, “Disposition of Technical Specifications that are Insufficient to Ensure Plant Safety” (Agencywide Documents Access and Management System (ADAMS) Accession No. ML18086A690). The staff requested public comments on DG-1351 through a *Federal Register* notice issued on July 5, 2018 (83 FR 31429). The staff extended the original comment period by *Federal Register* notice issued on September 11, 2018 (83 FR 45980).

DG-1351 proposes new guidance that describes methods and procedures that are acceptable to the NRC staff for dispositioning technical specifications (TSs) that are insufficient to ensure plant safety. The DG proposes to endorse, with exceptions and clarifications, the Nuclear Energy Institute (NEI) guidance in NEI 15-03, Revision 2, “Licensee Actions to Address Nonconservative Technical Specifications” (ADAMS Accession No. ML17276A642).

II. OVERVIEW OF COMMENTERS AND COMMENTS

The NRC staff received four comment submissions, which the staff divided into 32 individual comments. The table below presents information on the commenters who submitted comments on DG-1351.

Name	Affiliation	ADAMS Accession No.	Identifier
Timothy Riti	Nuclear Energy Institute (NEI)	ML18221A131	NEI
James Barstow	Exelon Generation Company, LLC (EGC)	ML18264A052	EGC
Brian Mann	Technical Specifications Task Force (TSTF)	ML18282A171	TSTF
Mandy Halter	Entergy Nuclear Operations, Inc. and Entergy Operations, Inc. (Entergy)	ML18288A009	-

The commenters were generally supportive of DG-1351. Entergy agreed with the comments made by the TSTF and did not provide any additional comments. The NRC staff binned similar comments together and grouped them into the following categories:

- A. Comments regarding the purpose of the DG
- B. Comments regarding timeliness of corrective actions
- C. Comments regarding missing TS requirements
- D. Other comments

II.A Comments Regarding the Purpose of the DG

Comment 01: The purpose of the DG is to endorse NEI 15-03. The DG does not use the same language and purpose as NEI 15-03, but instead follows NRC Administrative Letter (AL) 98-10, “Dispositioning of Technical Specifications that are Insufficient to Assure Plant Safety” (ADAMS Accession No. ML031110108) which is inconsistent with NEI 15-03. The DG, including the title, should be revised to be consistent with the purpose and language in NEI 15-03. In addition, the NRC exceptions and clarifications should be deleted, except for paragraph C.3 regarding the reference to NEI 16-07. The commenter also proposed revised language consistent with these statements.

NRC Response 01: The NRC staff disagrees with the intent of the comment. However, the staff has revised paragraph C.1 of the RG based on this comment.

The DG described the general purpose of regulatory guides (RGs) as follows: “The NRC issues RGs to describe to the public methods that the staff considers acceptable for use in implementing specific parts of the agency’s regulations, to explain techniques that the staff uses in evaluating specific problems or postulated events, and to provide guidance to applicants.” Endorsement of industry guidance is just one method the NRC uses to accomplish this purpose.

The purpose of this RG is to provide guidance to nuclear power plant licensees on methods and procedures that are acceptable to the NRC staff for dispositioning TSs that are insufficient to ensure plant safety. The NRC developed the DG to be consistent with AL 98-10 to avoid changes in NRC positions and policy. The NRC staff discussed the need for the NEI guidance to remain consistent with AL 98-10 during a public meeting on August 8, 2017 (ADAMS Accession No. ML17227A030). The title of the DG was chosen to maintain consistency with AL 98-10, and to reflect that the staff is taking certain exceptions to NEI 15-03.

In its final policy statement on TS improvements for nuclear power reactors (58 FR 39132; July 22, 1993), the Commission stated, in part:

The purpose of Technical Specifications is to impose those conditions or limitations upon reactor operation necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health and safety and establishing on them certain conditions of operation which cannot be changed without prior Commission approval.

As discussed in RG Section C.2.a, the NRC staff takes exception to the following statement in Section 2, “Purpose,” of NEI 15-03:

This document provides guidance to licensees in addressing an existing technical specification requirement that does not protect the assumptions or conclusions in either Updated Final Safety Analysis Report (UFSAR) or the Technical Specification Bases, referred to herein as a nonconservative technical specification (NCTS).

This is inconsistent with Commission’s policy on the purpose of TSs and the regulations in Title 10 of the *Code of Federal Regulations*, 10 CFR 50.36, which specifies the requirements for the content of TSs. In addition, this statement provides guidance on 10 CFR 50.36, which is outside the scope of the DG. This statement also does not consider the fact that

nonconservative assumptions and incorrect conclusions can result in a TS that is insufficient to ensure plant safety.

Paragraph C.1.a was intended to clarify the scope of the RG given the NRC exception in RG Section C.2.a discussed above. Although the NRC staff disagrees with the NEI 15-03 definition of an NCTS, if the TSs are insufficient to ensure plant safety then this condition should be dispositioned as an NCTS in accordance with the RG. The NRC staff has revised paragraph C.1. of the RG to clarify this position.

Paragraph C.1 of the DG quoted the first paragraph in Section 1, "Introduction," of NEI 15-03. Based on this comment, it appears that using this quote for the clarifications and exceptions in paragraph C.1 may have been read as a broader exception to NEI 15-03. Therefore, the quote from NEI 15-03, Section 1, has been removed. The revised clarification in paragraph C.1 no longer references this quote.

The NRC staff has also determined that the exceptions in DG paragraphs C.1.b and C.1.c are not needed. The staff understands that the introduction of NEI 15-03 does not provide comprehensive guidance. The guidance in DG paragraphs C.1.b and C.1.c is contained in other parts of NEI 15-03 and in RG paragraph C.4. Therefore, paragraphs C.1.b and C.1.c are deleted.

II.B Comments Regarding Timeliness of Corrective Actions

Comment 02: The discussions on timeliness of corrective actions impose new requirements and could be a backfit. The DG exception on timeliness is inconsistent with DG Section D, "Implementation."

NRC Response 02: The NRC staff disagrees with the comment. However, the NRC staff has clarified the discussion of timeliness in the RG in response to this and other comments.

The regulations in Criterion XVI of 10 CFR Part 50, Appendix B, clearly establish a requirement for conditions adverse to quality to be promptly identified and corrected. The NRC staff position that a Criterion XVI is applicable to TSs that are insufficient to ensure plant safety is not a new position (see AL 98-10). As stated in DG Section D, licensees may voluntarily use the RG to demonstrate compliance with the underlying NRC regulations. Section D also states that the NRC staff does not intend or approve any imposition or backfitting of the guidance in this RG.

In DG paragraph C.4, the NRC staff provided additional guidance on acceptable timeframes for implementing final corrective actions to resolve NCTS. This guidance is consistent with AL 98-10 and is intended to provide licensees with greater regulatory certainty. The NRC staff is not imposing these timeframes on licensees, and licensees may establish different timeframes consistent with TS operability requirements and Criterion XVI of 10 CFR Part 50, Appendix B.

Comment 03: The time limits on taking corrective action put forward in the DG have no identified basis. All discussions regarding timeliness should be removed from the DG.

NRC Response 03: The NRC staff disagrees with the comment. However, the NRC staff has clarified the discussion of timeliness in the RG in response to this and other comments.

AL 98-10 provides guidance regarding the time frame for completing corrective actions to resolve TS that are insufficient to ensure plant safety. In addition, NEI 15-03, Section 3.6, provides guidance regarding the timeliness of corrective actions for NCTS. Therefore, the NRC staff considers it appropriate and necessary to discuss the timeliness of corrective actions for NCTS in this RG.

AL 98-10 states, in part:

Generic Letter (GL) 91-18, Revision 1, "Information to Licensees Regarding NRC Inspection Manual Section on Resolution of Degraded and Nonconforming Conditions", provides guidance to licensees on the type and time frame of any required corrective action. As stated in the GL, whenever degraded or nonconforming conditions are discovered, 10 CFR Part 50, Appendix B, requires prompt corrective action to correct or resolve the condition. In the case of a deficient TS, this includes the evaluation of compensatory measures, such as administrative controls, in accordance with 10 CFR 50.59 and prompt actions to correct the TS. If the licensee does not resolve the degraded or nonconforming condition, the staff would conclude that corrective action has been inadequate and would consider taking enforcement action.

GL 91-18, Revision 1, Attachment 1 (ADAMS Package Accession No. ML031200706) further states:

In determining whether the licensee is making reasonable efforts to complete corrective action promptly, NRC will consider whether corrective action was taken at the first opportunity, as determined by safety significance (effects on operability, significance of degradation) and by what is necessary to implement the corrective action. Factors that might be included are the amount of time required for design, review, approval, or procurement of the repair/modification; availability of specialized equipment to perform the repair; or the need to be in a hot or cold shutdown to implement the actions. The NRC expects time frames longer than the next refueling outage to be explicitly justified by the licensee as part of the deficiency tracking documentation. If the licensee does not resolve the degraded or nonconforming condition at the first available opportunity or does not appropriately justify a longer completion schedule, the staff would conclude that corrective action has not been timely and would consider taking enforcement action.

The NRC staff position regarding the time frame to correct a TS that is insufficient to ensure plant safety is consistent with the current NRC guidance in AL 98-10. The discussion in DG Section B regarding timeliness of corrective actions has been revised to focus on the guidance that is in AL 98-10, as it provides the basis for the NRC staff's position in RG paragraph C.4.

Comment 04: The DG acknowledges that the time limits in the exception are not supported by regulations.

NRC Response 04: The NRC staff disagrees with the comment.

The regulations in Criterion XVI of 10 CFR Part 50, Appendix B, clearly establish a requirement for conditions adverse to quality to be promptly identified and corrected. However, the NRC staff identified several statements in the DG which could have led to this misinterpretation. The

NRC staff has revised paragraph C.4 to clarify that the concept of timely corrective actions is established by this regulation. In addition, the staff has eliminated some of the discussion in DG Section B which could have led to this misinterpretation.

Comment 05: It may not be feasible to correct an NCTS by the next refueling outage, if it was identified near the end of the cycle. Additional clarification and flexibility is warranted depending on the proximity to the refueling outage.

NRC Response 05: The NRC staff agrees with the comment and has revised DG paragraph C.4 to clarify the timeframe for completion of corrective actions to address NCTS. Specifically, the staff clarified that final corrective action for an NCTS would typically be completed no later than the end of the next refueling outage, but a longer timeframe for completion may be justified for some conditions. The NRC staff also deleted statements regarding the timeliness of corrective actions from paragraph 1.b that were redundant to paragraph C.4.

Comment 06: One commenter suggested that additional wording should be added to the DG to improve consistency with IMC 0326. Another commenter suggested that quotes from IMC 0326 should be eliminated and replaced with terminology from Appendix B to 10 CFR Part 50 because IMC 0326 may be revised. It was further suggested that reference to IMC 0326 be eliminated.

NRC Response 06: The NRC staff revised the discussion on timeliness of corrective actions in RG Section B based on these comments.

AL 98-10 states that a TS that is insufficient to ensure plant safety is considered a degraded and nonconforming condition per Generic Letter (GL) 91-18, Revision 1. Thus, the discussion regarding GL 91-18 on timeliness of corrective actions is directly relevant to the RG. The RG uses terminology from Appendix B to 10 CFR Part 50, as appropriate.

NRC Inspection Manual IMC 0326 superseded GL 91-18, and it is the current guidance for inspectors regarding resolution of degraded or nonconforming conditions adverse to quality or safety. The RG is not intended to replicate the guidance in IMC 0326, so additional wording from IMC 0326 is not needed. As the RG is endorsing NEI 15-03, with exceptions and clarification, most of the guidance is contained within NEI 15-03 and is not repeated in the RG. NEI 15-03 discusses the need to assess operability when an NCTS is discovered. The guidance in NEI 15-03 regarding assessing operability is consistent with IMC 0326, so there is no need to provide additional guidance in the RG based on IMC 0326.

Further a revision to IMC 0326 is near completion. Therefore, all references to IMC 0326 have been removed from the DG.

II.C Comments Regarding Missing TS Requirements

Comment 07: The RG discussions on the lack of a TS impose new requirements. One commenter expressed concern that inspectors could use the RG to circumvent backfit requirements in these areas.

NRC Response 07: The NRC staff disagrees with these comments. However, the staff clarified the discussion regarding the applicability of the RG to missing TS requirements. As stated in DG Section D, licensees may voluntarily use the RG to demonstrate compliance with the underlying NRC regulations. Section D of the RG states that the NRC staff does not

intend or approve any imposition or backfitting of the guidance in this RG. Section D also discusses the use of this RG by inspectors, and states that “unless this RG is part of the licensing basis for a facility, the staff may not represent to the licensee that the licensee’s failure to comply with the positions in this RG constitutes a violation.”

Comment 08: The lack of a TS limiting condition for operation (LCO) does not constitute an NCTS. The NRC issued the TSs and determined they met 10 CFR 50.36. If a new TS requirement is needed, then the DG is the wrong process to follow. This position is inconsistent with AL 98-10 and NEI 15-03. If a new TS LCO is needed, the licensee should use its corrective action process and the license amendment process in 10 CFR 50.90. One commenter stated that all discussions regarding missing TS requirements being an NCTS should be removed from the RG.

NRC Response 08: The NRC staff disagrees in part with this comment. The NRC staff agrees that the simple absence of a TS requirement is not by itself an NCTS. However, the final resolution of a TS that is insufficient to ensure plant safety may include the addition of TS requirements through the license amendment process. The staff revised paragraph D.2.b of the RG based on this comment.

The NRC issues all TSs with a determination that they meet 10 CFR 50.36. This fact does not exempt licensees from Criterion XVI of 10 CFR Part 50, Appendix B, which requires that conditions adverse to quality to be promptly identified and corrected. Therefore, an NCTS must be corrected in accordance with Criterion XVI as it is considered a condition adverse to quality.

The DG provides guidance on how to disposition an NCTS once it is identified. The DG does not provide guidance on 10 CFR 50.36, which specifies the requirements for the contents of the TS. Guidance regarding the format and content of the TS is found in the improved standard TS (i.e., NUREG-1430 through NUREG-1434). The DG does provide guidance on what a licensee can do when it discovers that its TSs are not in compliance with 10 CFR 50.36.

The NRC staff agrees that if it is identified that a new TS LCO is needed, the licensees should enter the issue into the corrective action process and apply for an amendment in accordance with 10 CFR 50.90. This is discussed in NEI 15-03 Sections 3.3 and 3.6. However, the staff disagrees with the statement that the DG is the wrong process to follow in this situation. The DG provides relevant guidance for the interim period between when the NCTS is discovered and when it is ultimately resolved. The DG is not intended to provide guidance on the corrective action process and the license amendment process, but can be used in conjunction with these processes.

II.D Other Comments

Comment 09: Delete paragraph C.2.c of DG-1351 since this clarification regarding corrective actions is in NEI 15-03, Section 3.6.

NRC Response 09: The NRC staff agrees with the comment and has deleted paragraph C.2.c.

Comment 10: Include guidance for plants that have adopted 10 CFR 50.69, since certain requirements (e.g., Appendix B and Section 50.72 to 10 CFR Part 50) are not applicable to RISC-3 and RISC-4 SSCs.

NRC Response 10: The NRC staff declines to include guidance on 10 CFR 50.69 in this RG.

Comment 11: The paragraph in DG Section B which discusses, in general terms, licensee failure to properly address NCTS was taken from AL 98-10. This paragraph may not be accurate given that most licensees have developed procedures and programs to address this issue.

NRC Response 11: The NRC staff made no changes to the DG based on this comment.

The NRC staff notes that Section 3.6 of NEI 15-03 provides real examples of licensee's failure to take timely action to correct NCTS. The cited examples occurred after the issuance of AL 98-10.

Subject: DRAFT NRC Staff Responses to Public Comments on DG-1351:
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