

CFR Part 73 when the exemptions are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

NRC approval of this exemption, as noted above, allows an extension from March 31, 2010, until December 30, 2010, to allow for temporary noncompliance with the new rule in two specific areas. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR 73. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final rule provided to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to achieve full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site specific analyses to determine what changes were necessary to implement the rule's requirements, and that changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a generic industry request to extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date (Reference: June 4, 2009 letter from R. W. Borchardt, NRC, to M. S. Fertel, Nuclear Energy Institute). The licensee's request for an exemption is therefore consistent with the approach set forth by the Commission and discussed in the June 4, 2009 letter.

HBRSEP Schedule Exemption Request

The licensee provided detailed information in Attachment 1 of its November 30, 2009, letter requesting an exemption. It describes a comprehensive plan to upgrade the security capabilities of its HBRSEP site and provides a timeline for achieving full compliance with the new regulation. Attachment 1 contains proprietary information regarding the

site security plan, details of the specific requirements of the regulation for which the site cannot be in compliance by the March 31, 2010, deadline and why the site cannot be in compliance, the required changes to the site's security configuration, and a timeline with critical path activities that will bring the licensee into full compliance by December 30, 2010. The timeline provides dates indicating when construction will begin on various phases of the project and when critical equipment will be ordered, installed, tested and become operational.

Notwithstanding the schedular exemptions for these limited requirements, the licensee will continue to be in compliance with all other applicable physical security requirements as described in 10 CFR 73.55 and reflected in its current NRC approved physical security program. Furthermore, the security measures for which HBRSEP needs additional time to implement are in addition to those required by the security orders issued in response to the events of September 11, 2001. By December 30, 2010, HBRSEP will be in full compliance with all the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

4.0 Conclusion for Part 73 Schedule Exemption Request

The staff has reviewed the licensee's submittal and concludes that the licensee has provided adequate justification for its request for an extension of the compliance date to December 30, 2010, with regard to two specified requirements of 10 CFR 73.55.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, an exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption.

The NRC staff has determined that the long-term benefits that will be realized when the associated HBRSEP site modifications are complete justify exceeding the full compliance date with regard to the two specific requirements of 10 CFR 73.55 in the case of this particular licensee. Therefore, the NRC concludes that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption from the March 31, 2010, deadline for the two items specified in Attachment 1 of the licensee's letter

dated November 30, 2009, the licensee is required to be in full compliance by December 30, 2010. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (*i.e.*, 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment 75 FR 8410, February 24, 2010.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of March 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010-5271 Filed 3-10-10; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-302, License No. DPR-72; Docket No. 50-302, NRC-2010-0096]

Florida Power Corporation, City of Alachua, City of Bushnell, City of Gainesville, City of Kissimmee, City of Leesburg, City of New Smyrna Beach and Utilities Commission, City of New Smyrna Beach, City of Ocala, Orlando Utilities Commission and City of Orlando, Seminole Electric Cooperative, Inc., Crystal River Unit 3 Nuclear Generating Plant; Receipt of Request for Action Under 10 CFR 2.206

Notice is hereby given that by petition dated December 5, 2009, Mr. Thomas Saporito (petitioner) has requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to the licensee for the Crystal River Unit 3 Nuclear Generating Plant (CR-3). The petitioner requests that NRC take enforcement action against the licensee and issue a Confirmatory Order requiring that the licensee take the following actions at CR-3:

1. Physically remove the outer 10 inches of concrete surrounding the CR-3 containment building from the top of the containment building to the bottom of the containment building and encompassing 360 degrees around the entire containment building;

2. Test samples of the concrete removed from the CR-3 containment building for composition and compare the test results to a sample of concrete

from a similarly designed facility like the Florida Power and Light Company, Turkey Point Nuclear Plant;

3. Maintain the CR-3 in cold-shutdown mode until such time as the licensee can demonstrate full compliance with its NRC operating license for CR-3 within the safety margins delineated in the licensee's Final Safety Analysis Report (FSAR) and within the CR-3 site-specific technical specifications; and

4. Provide the public with an opportunity to intervene at a public hearing before the NRC Atomic Safety and Licensing Board to challenge any certification made by the licensee to NRC that it has reestablished full compliance with 10 CFR part 50 and the safety margins delineated in its FSAR and technical specifications.

In addition, during the January 7, 2010, conference call, the petitioner supplemented his December 5, 2009, petition with a verbal request to require the licensee to reform the containment building with additional concrete. The Petition Review Board (PRB) determined that this request supplements Item 1.

As the basis for the request:

1. The petitioner stated that during a maintenance activity performed under the direction and authorization of the licensee to cut an opening in the CR-3 containment building for access to replace steam generator units, the CR-3 containment building was discovered to have one or more separations between the poured concrete perimeter wall of the containment building and the horizontally installed tendons placed from top to bottom around the containment building within 10 inches of the outermost part of the 42-inch thick concrete perimeter wall of the containment building. To date, the licensee has not been able to determine the "root-cause" of this structural failure.

2. The petitioner stated that the licensee is currently engaged in conducting Impulse Testing of the remaining CR-3 containment building perimeter wall to determine if additional separations exist. However, the petitioner implies that the licensee's use of Impulse Testing is not sufficient to make such a determination. Notably, Impact Echo testing is used worldwide to determine concrete cracking and failures on public bridges and the like, but even this type of testing is not sufficient to fully validate the entirety of the CR-3 containment building. Moreover, the petitioner believes that even the use of destructive testing to make visual inspections of small areas of the CR-3 containment building is not

sufficient to qualify the entirety of the containment building.

3. The petitioner stated that removal of 10 inches of concrete from the outer part of the 42-inch containment building wall from top to bottom and 360-degrees around would effectively expose the entirety of the surrounding 5¼-inch tendons and allow visual inspection of the inner side of the tendons to make certain that no separation between the tendons and the inner part of the concrete wall exist.

4. The petitioner stated that removal of 10-inches of concrete from the outer part of the 42-inch containment building wall from top to bottom and 360 degrees around would ensure for the best possible adhesion of a new concrete pour to the existing inner concrete perimeter wall of the containment building.

5. The petitioner stated that the licensee's FSAR requires that the CR-3 containment building be composed of a monolithic concrete perimeter wall. The petitioner believes that the only way the licensee can fully achieve compliance with its FSAR is to remove 10 inches of concrete from the outer part of the 42-inch containment building wall from top to bottom and 360 degrees around for proper visual inspect repair activities.

Moreover, during the January 7, 2010, conference call, the petitioner implied that a design flaw may have occurred, meaning the actual design of this containment structure has those tendons placed within 10 inches of the exterior part of that 42-inch thick concrete wall; the design may itself be flawed and subject the entire structure to other cracks, fissures, and voids that the licensee simply cannot detect with any type of instrumentation to make certain of their nonexistence. Therefore, the petitioner requested that the CR-3 containment building not only meet but exceed its original design basis as delineated in the FSAR.

The PRB discussed the petitioner's request during internal meetings and made the initial PRB recommendation. The PRB's initial recommendation is as follows:

- Item 1, as supplemented by the January 7, 2010, conference call, does not meet the NRC Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions" (MD 8.11), criteria for further review under the 10 CFR 2.206 process in that sufficient facts have not been provided to support the request.

- Item 2 does not meet the MD 8.11 criteria for further review under the 10 CFR 2.206 process in that sufficient

facts have not been provided to support the request.

- Item 3 meets the criteria established in MD 8.11 for acceptance into the 10 CFR 2.206 process for the petition under consideration.

- Item 4 does not meet the MD 8.11 criteria for further review under the 10 CFR 2.206 process in that the request has not specifically addressed an enforcement-related action.

On February 2, 2010, the petition manager informed the petitioner of the PRB's initial recommendation and offered him a second opportunity to address the PRB. On February 12, 2010, the petitioner declined the opportunity to address the PRB and did not provide any additional information for the PRB's consideration. Therefore, the PRB's initial recommendation, as discussed above, is the PRB's final recommendation.

NRC is treating Item 3 of the petitioner's request pursuant to 10 CFR 2.206, "Requests for Action under This Subpart." The request has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by Section 2.206, NRC will take appropriate action on this petition within a reasonable time. A copy of the petition is available for inspection at the Commission's Public Document Room (PDR) located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, MD. Publicly available records related to this action will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff by telephone at 1-800-397-4209 or 301-415-4737 or by e-mail to pdr.Resource@nrc.gov. The ADAMS accession number for the incoming petition request is ML093430702.

Dated at Rockville, Maryland, this 4th day of March, 2010.

For the U.S. Nuclear Regulatory Commission.

Eric J. Leeds,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2010-5273 Filed 3-10-10; 8:45 am]

BILLING CODE 7590-01-P