

For the Nuclear Regulatory Commission.

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## **NUCLEAR REGULATORY COMMISSION**

[Docket Nos. 50-361 and 50-362; NRC-  
2010-0101]

### **Southern California Edison, San Onofre Nuclear Generating Station, Unit 2 and Unit 3; Exemption**

#### **1.0 Background**

Southern California Edison (SCE, the licensee) is the holder of the Facility Operating License Nos. NPF-10 and NPF-15, which authorize operation of the San Onofre Nuclear Generating Station (SONGS), Unit 2 and Unit 3, respectively. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors located in San Diego County, California.

#### **2.0 Request/Action**

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73, "Physical protection of plants and materials," Section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published in the **Federal Register** on March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to 10 CFR 73.55 published on March 27, 2009 (74 FR 13926), establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks on September 11, 2001, and implemented by the licensees. In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post September 11, 2001, security orders. It is from two of these additional requirements that SCE now seeks an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking

have already been or will be implemented by the licensee by March 31, 2010.

By letter dated December 17, 2009, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." Portions of the December 17, 2009, submittal contain security-related and safeguards information and, accordingly, a redacted version of the December 17, 2009, letter was also submitted by the licensee on December 17, 2009 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML093570268). This redacted version is available to the public. The licensee has requested an exemption from the March 31, 2010, implementation date stating that a number of issues will present a significant challenge to the timely completion of the projects related to certain specific requirements in 10 CFR 73. Specifically, the request is to extend the implementation date from the current March 31, 2010, deadline to October 31, 2010, for one specific requirement, and to January 31, 2011, for a second specific requirement. Granting this exemption for the two items would allow the licensee to complete the modifications designed to update aging equipment and incorporate state-of-the-art technology to meet the noted regulatory requirements.

#### **3.0 Discussion of Part 73 Schedule Exemptions from the March 31, 2010, Full Implementation Date**

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR Part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.'" Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 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, would allow an extension of the implementation date from March 31, 2010, until October 31, 2010, and January 31, 2011, for two specific requirements of the new rule. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR Part 73. The NRC staff has determined that granting the licensee's proposed exemption would 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 power reactor security 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 as documented in a letter from R. W. Borchardt, (NRC), to M. S. Fertel, (Nuclear Energy Institute) dated June 4, 2009. 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.

#### **SONGS Schedule Exemption Request**

The licensee provided detailed information in Enclosure 1 to its letter dated December 17, 2009, requesting an exemption. In that letter, the licensee described a comprehensive plan to study, design, construct, test, and turn over the new equipment for the enhancement of the security capabilities at the SONGS site and provides a timeline for achieving full compliance with the new regulation. Enclosure 1 of the application dated December 17, 2009, contains security-related and safeguards information regarding the site security plan, details of the specific requirements of the regulation for which the site cannot achieve compliance by the March 31, 2010, deadline, justification for the extension request, a description of the required changes to the site's security configuration, and a timeline with critical path activities that would enable the licensee to achieve full compliance by January 31, 2011.

The timeline provides dates indicating when (1) construction will begin on various phases of the project, (2) outages are scheduled for each unit, and (3) critical equipment will be ordered, installed, tested and become operational.

Notwithstanding the schedule exemptions for these limited requirements, the licensee would 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. By January 31, 2011, SONGS would be in full compliance with 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 dates to October 31, 2010, and to January 31, 2011, for two specified requirements.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," 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 SONGS security modifications are completed justifies exceeding the full compliance date with regard to the specified requirements of 10 CFR 73.55. The significant security enhancements SONGS needs additional time to complete are new requirements imposed by March 27, 2009, amendments to 10 CFR 73.55, and are in addition to those required by the security orders issued in response to the events of September 11, 2001. 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 Enclosure 1 of SCE's letter dated December 17, 2009, the licensee is required to be in full compliance by January 31, 2011. 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 12580; dated March 16, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 16th day of March 2010.

For the Nuclear Regulatory Commission.

**Joseph G. Gütter,**

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

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### NUCLEAR REGULATORY COMMISSION

[NRC-2010-0122]

#### Proposed Generic Communications; Applicability of 10 CFR Part 21 Requirements to Applicants for Standard Design Certifications

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of opportunity for public comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) to clarify the agency's regulatory position regarding the applicability of 10 CFR Part 21 requirements to standard design certification or design certification rule (DCR) applicants (hereafter referred to as DCR applicants) before and after the DCR is issued by the NRC. This RIS requires no action or written response on the part of addressees.

**DATES:** Comment period expires May 10, 2010. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

**ADDRESSES:** Submit written comments to the Chief, Rulemaking and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop TWB-05-B01M, Washington, DC 20555-0001, and cite the publication date and page number of this **Federal Register** notice.

**FOR FURTHER INFORMATION, CONTACT:** Milton Concepcion, at 301-415-4054 or by e-mail at [Milton.Concepcion@nrc.gov](mailto:Milton.Concepcion@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

#### NRC Regulatory Issue Summary 2010-XX

#### Applicability of 10 CFR Part 21 Requirements to Applicants for Standard Design Certifications

##### Addressees

All holders of and applicants for an early site permit, combined operating license (COL), manufacturing license, and standard design approval; and applicants for a standard design certification under the provisions of Title 10 of the Code of Federal Regulations (10 CFR) Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants."

##### Intent

The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) to clarify the agency's regulatory position regarding the applicability of 10 CFR Part 21 requirements to standard design certification or design certification rule (DCR) applicants (hereafter referred to as DCR applicants) before and after the DCR is issued by the NRC. This RIS requires no action or written response on the part of addressees.

##### Background

The regulations in 10 CFR Part 21 establish procedures and requirements for implementation of Section 206 of the Energy Reorganization Act (ERA) of 1974, as amended. Section 206 applies to any individual or responsible officer of a firm "constructing, owning, operating, or supplying the components of any facility or activity which is licensed or otherwise regulated" by the NRC.

The statements of consideration that accompanied the final rule for 10 CFR Part 52 (3150-AG24), published in the **Federal Register** on August 28, 2007 (72 FR 49352), clarified the applicability of various requirements to each of the licensing processes in 10 CFR Part 52, including how Section 206 reporting requirements and, therefore, the provisions of 10 CFR Part 21, should be extended to early site permits, standard design certifications, and combined licenses. As indicated in the statements of consideration for the 2007 conforming changes to 10 CFR Part 52 Final Rule; the NRC's reporting requirements in 10 CFR Part 21, as applicable to Part 52 licensing and approval processes, are consistent with three key principles as described below.

The first principle ensures that the regulatory requirements of Section 206 of the ERA extend throughout the entire