

For the Nuclear Regulatory Commission.
Dated this 24th day of March 2010 at
Rockville, Maryland.

Scott W. Moore,

*Deputy Director, Office of International
Programs.*

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50-285; NRC-2010-0087]

Omaha Public Power District; Fort Calhoun Station, Unit 1; Exemption

1.0 Background

Omaha Public Power District (OPPD, the licensee) is the holder of Renewed Facility Operating License No. DPR-40 which authorizes operation of the Fort Calhoun Station, Unit 1 (FCS). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of one pressurized-water reactor located in Washington County, Nebraska.

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, establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001, and implemented by 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 three of these new requirements that OPPD 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 31, 2009, as supplemented by letter dated January 21, 2010, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." Portions of the licensee's letters dated December 31, 2009, and January 21, 2010, contain security-related information and, accordingly, those portions are being withheld from public disclosure. The licensee has requested an exemption from the March 31, 2010, compliance date stating that it must complete a number of significant modifications to the current site security configuration before all requirements can be met. Specifically, the request is for three requirements that would be met by October 5, 2011, instead of the March 31, 2010, deadline. Granting this exemption for the three items would allow the licensee to complete the necessary security system upgrades to meet or exceed 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 from March 31, 2010, until October 5, 2011, of the implementation date for three 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 73. The NRC staff has determined that granting of 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 rule sent 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 reach 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 request to generically 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 the 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.

FCS Schedule Exemption Request

The licensee provided detailed information in the Attachments to its letters dated December 31, 2009, and January 21, 2010, requesting an exemption. The licensee is requesting additional time to implement certain new requirements due to the amount of engineering and design, material procurement, and construction and installation activities. The licensee describes a comprehensive plan to upgrade the security capabilities of the FCS site and provides a timeline for achieving full compliance with the new regulation. The Attachments to the licensee's letters contain security-related information regarding the site security plan, details of specific requirements of the regulation for which the site cannot be in compliance by the March 31, 2010, deadline, and a timeline with critical path activities that would enable the licensee to achieve full compliance by October 5, 2011. The timeline provides milestone dates for engineering, planning and procurement, implementation, startup and testing, engineering closeout, and project closeout. A redacted version of the licensee's letter dated December 31, 2009, is publicly available in Agencywide Documents Management and Access System (ADAMS) Accession No. ML100050032.

Notwithstanding the schedule 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. By October 5, 2011, FCS 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 submittals and concludes that the licensee has justified its request for an extension of the compliance date with regard to three specified requirements of 10 CFR 73.55 until October 5, 2011.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," 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 has determined that the long-term benefits, that will be realized when the FCS modifications are complete, justify extending the full compliance date in the case of this particular licensee. The significant security measures for which FCS 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 three items specified in the Attachments to FCS's letters dated December 31, 2009, and January 21, 2010, the licensee is required to be in full compliance with 10 CFR 73.55 by October 5, 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 10835; March 9, 2010].

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 23rd day of March 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

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

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50-528, STN 50-529, and STN 50-530 NRC-2010-0114]

Arizona Public Service Company, et al. Palo Verde Nuclear Generating Station, Units 1, 2, and 3; Exemption

1.0 Background

The Arizona Public Service Company (APS, the licensee) is the holder of Facility Operating License Nos. NPF-41, NPF-51, and NPF-74, which authorize operation of the Palo Verde Nuclear Generating Station (PVNGS), Units 1, 2, and 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 three pressurized-water reactors located in Maricopa County, Arizona.

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 APS 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 21, 2009, as supplemented by letters dated February 16 and March 5, 2010, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's letters can be found in the Agencywide Documents Access and Management System (ADAMS), at Accession Nos. ML100040088, ML100550875, and ML100680760, respectively. The licensee's letters dated December 21, 2009, and March 5, 2010, contain security-related information and, accordingly, those portions of the letters are being withheld from public disclosure. 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 Part 73. Specifically, the request is to extend the implementation date from the current March 31, 2010, deadline to June 30, 2010, for one specified item, and to December 17, 2010, for the second specified item. 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.