

the ENO letter dated January 14, 2010, supplemented by letter dated February 16, 2010, the licensee is required to be in full compliance by August 31, 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 14473; dated March 25, 2010].

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 25th 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. 50-325 and 50-324; NRC-2010-0066]

### **Carolina Power & Light Company, Brunswick Steam Electric Plant, Units 1 and 2; Exemption**

#### **1.0 Background**

Carolina Power & Light Company (CP&L, the licensee) is the holder of Facility Operating Renewed License Nos. DPR-71 and DPR-62, which authorize operation of the Brunswick Steam Electric Plant (BSEP), Units 1 and 2. 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, the Commission) now or hereafter in effect.

The facility consists of two boiling water reactors located in Brunswick County, North Carolina.

#### **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 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 plans. 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 two of these new requirements that BSEP 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 November 30, 2009 (Agencywide Documents Access and Management System Accession No. ML093370132), the licensee requested exemptions in accordance with 10 CFR 73.5, "Specific exemptions." Attachment 1 to the licensee's November 30, 2009, letter contains security-related information and, accordingly is not available to the public. The licensee has requested exemptions 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 to extend the compliance date for two specific requirements of the new rule from the current March 31, 2010, deadline to December 20, 2010. Being granted this exemption for the two items would allow the licensee to complete changes to the BSEP security systems that include infrastructure upgrades, modification and installation of the security system equipment, and construction of new facilities to support the new physical protection program 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 these exemptions would, as noted above, allow an extension from March 31, 2010, until December 20, 2010, for compliance 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 exemptions would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemptions are 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 an industry generic 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 exemptions is therefore consistent with the approach set forth by the Commission and discussed in the June 4, 2009, letter.

#### **Brunswick Schedule Exemption Request**

The licensee provided detailed information in Attachment 1 of the CP&L letter dated November 30, 2009, requesting exemptions. It describes a comprehensive plan for upgrade and installation of equipment, infrastructure upgrades, and construction of new facilities to support the physical

protection program and provides a timeline for achieving full compliance with the new regulation. These plant modifications are significant in scope involving the construction of new facilities, extensive design and procurement efforts, and work with high voltage cabling and the personnel safety risk associated with such work. These modifications warrant a thorough review of the safety-security interface and must be coordinated with BSEP Unit 1 refueling outage in spring 2010. All of these efforts require careful design, planning, procurement, and implementation efforts. Attachment 1 of the November 30, 2009, letter contains security-related information regarding the site security plan, details of specific portions of the regulation of which the site will not be in compliance by the March 31, 2010, deadline, changes to the site's security configuration to meet the new requirements, and a timeline (Project Schedule Milestones) with critical path activities for the licensee to achieve full compliance by December 20, 2010. The timeline provides dates indicating when (1) design activities are completed and approved, (2) the outage is scheduled for BSEP Unit 1, (3) construction of a new Security Electrical Equipment Building begins and is completed, and (4) the new and relocated equipment is installed and tested.

The licensee has provided an adequate basis for the exemption request. CP&L identified the physical protection program components for which modifications are needed, the types of modifications and upgrades needed, as well as construction, engineering, safety, and infrastructure considerations which impact the final compliance date requested. The required modifications must be completed in sequence to support all program upgrades being performed. The schedule provided by the licensee in this request outlines the specific tasks required at BSEP and shows the sequential order in which work must proceed with associated dates that support the requested new compliance date.

The site-specific information provided within the BSEP exemption request is relative to the requirements from which the licensee requested exemption and demonstrates the need for modification to meet the two specific requirements of 10 CFR 73.55. The proposed implementation schedule depicts the critical activity milestones of the security system upgrades; is consistent with the licensee's solution for meeting the requirements; is consistent with the scope of the

modifications and the issues and challenges identified and; is consistent with the licensee's requested compliance date.

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 December 20, 2010, BSEP Units 1 and 2 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 NRC staff has reviewed the licensee's submittals and concludes that the licensee has provided adequate justification for its request for an extension of the compliance date with regard to two specified requirements of 10 CFR 73.55 until December 20, 2010.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, 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 exemptions.

The long-term benefits that will be realized when these projects are complete justify extending the March 31, 2010, full compliance date with regard to the specific requirements of 10 CFR 73.55 for this particular licensee. The security measures that BSEP needs additional time to implement 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, it is concluded 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 exemptions to the March 31, 2010, deadline for the two items specified in Attachment 1 of CP&L letter dated November 30, 2009, the licensee is required to be in full compliance with 10 CFR 73.55 by December 20, 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 8753, February 25, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 25th 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. 50-003, 50-247 and 50-286; NRC-2010-0137]

### Indian Point Nuclear Generating Unit Nos. 1, 2, and 3; Exemption

#### 1.0 Background

Entergy Nuclear Operations, Inc. (the licensee) is the holder of Facility Operating License Nos. DPR-5, DPR-26, and DPR-64, which authorize operation of the Indian Point Nuclear Generating Unit Nos. 1, 2, and 3 (IP1, IP2, and IP3). The licenses provide, among other things, that the facilities are subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facilities consist of one permanently shut down reactor and two operating pressurized-water reactors located in Westchester County in New York State.

#### 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 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,