



Portland General Electric Company

*Trojan Nuclear Plant
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April 29, 2004

VPN-036-2004

Trojan ISFSI
Docket No. 72-17
License No. SNM-2509

ATTN: Document Control Desk
Director, Spent Fuel Project Office
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Sirs:

Request for Specific Exemption from 10 CFR 72.30(c) to Allow Continued Application of 10 CFR 50.75(e) and (h) Financial Assurance Methods Pursuant to 10 CFR 72.30(c)(5)

In accordance with 10 CFR 72.7, Specific Exemptions, this letter transmits Portland General Electric Company's (PGE's) request for Nuclear Regulatory Commission (NRC) approval of a specific exemption from the financial assurance requirements of 10 CFR 72.30(c), to the extent that following termination of the Trojan Nuclear Plant license issued under 10 CFR 50, the requirements of 10 CFR 72.30(c)(5) would continue to be applied to provide decommissioning financial assurance for the Trojan Independent Spent Fuel Storage Installation (ISFSI). Specifically, the requested exemption would allow the Trojan co-owners, following termination of the Trojan Nuclear Plant license issued under 10 CFR 50, to continue to use the applicable financial assurance methods of 10 CFR 50.75(e) and (h) as currently allowed by the NRC for holders of 10 CFR 50 licenses. As detailed further in the attachment to this letter, the proposed exemption satisfies the criteria of 10 CFR 72.7 – the proposed exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest.

To ensure implementation of the subject exemption, upon its approval, prior to termination of the Trojan Nuclear Plant 10 CFR 50 license, PGE respectfully requests that the NRC approve this exemption to the financial assurance requirements of 10 CFR 72.30(c) by April 30, 2005. If you

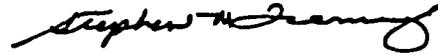
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have any questions regarding this correspondence, please contact Mr. Jerry D. Reid of my staff at (503) 556-6474.

Sincerely,



Stephen M. Quennoz
Vice President, Generation

Attachment

c: C. M. Regan, NRC, NMSS, DWM
Director, DNMS, NRC Region IV
C. M. Craig, NRC, NMSS, DWM
T. L. Fredrichs, NRC, NMSS, DWM
D. Stewart-Smith, ODOE

Request for Specific Exemption from 10 CFR 72.30(c) to Allow Continued Application of 10 CFR 50.75(e) and (h) Financial Assurance Methods Pursuant to 10 CFR 72.30(c)(5)

REQUEST FOR SPECIFIC EXEMPTION

Pursuant to the requirements of 10 CFR 72.7, Portland General Electric Company (PGE) requests specific exemption to the financial assurance requirements of 10 CFR 72.30(c), to the extent that following termination of the Trojan Nuclear Plant license issued under 10 CFR 50,¹ the requirements of 10 CFR 72.30(c)(5) would continue to be applied to provide decommissioning financial assurance for the Trojan Independent Spent Fuel Storage Installation (ISFSI). Specifically, the requested exemption would allow the Trojan ISFSI co-owners,² following termination of the Trojan Nuclear Plant license issued under 10 CFR 50, to continue to use the applicable financial assurance methods of 10 CFR 50.75(e) and (h) as currently allowed by the Nuclear Regulatory Commission (NRC) for holders of 10 CFR 50 licenses. As detailed further herein, the requested exemption satisfies the criteria of 10 CFR 72.7 – the proposed exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest.

BACKGROUND AND REASON FOR EXEMPTION REQUEST

Decommissioning financial assurance requirements applicable to holders of licenses issued under 10 CFR 72 are contained in 10 CFR 72.30(c). 10 CFR 72.30(c)(5) allows that “[i]n the case of licensees who are issued a power reactor license under Part 50 of this chapter, the [financial assurance] methods of 10 CFR 50.75(b), (e), and (h), as applicable” may be used in lieu of the methods of 10 CFR 72.30(c). Each co-owner of the Trojan ISFSI also co-owns an equivalent share of the Trojan Nuclear Plant, and is a co-licensee for the operating (possession only) license that the NRC issued for the Trojan Nuclear Plant under 10 CFR 50. Therefore, as allowed by 10 CFR 72.30(c)(5) for licensees who are issued a power reactor license under 10 CFR 50, two of the three Trojan ISFSI co-owners – PGE and PP&L – each currently provides financial assurance for the decommissioning of the Trojan ISFSI by making periodic contributions to an external trust fund maintained in accordance with 10 CFR 50.75 (e)(ii) and (h). BPA, as a Federal government entity fulfilling the Trojan ISFSI decommissioning funding obligations of EWEB, a licensee, provides financial assurance for Trojan ISFSI decommissioning in the form of a statement of intent as allowed by 10 CFR 72.30(c)(4). The methods that the Trojan ISFSI

¹ Decommissioning of the Trojan Nuclear Plant is nearing completion, with final site surveys anticipated to be completed by the end of 2004 and license termination anticipated in mid-2005.

² The Trojan ISFSI is jointly owned by PGE (67.5 percent ownership share), the City of Eugene through the Eugene Water and Electric Board (EWEB, 30 percent ownership share), and Pacific Power and Light/PacifiCorp (PP&L, 2.5 percent ownership share). PGE is the principal owner and has responsibility for maintaining the Trojan ISFSI. The Bonneville Power Administration (BPA), a power marketing agency under the United States Department of Energy (DOE), is obligated through Net Billing Agreements to pay costs associated with EWEB’s share of the Trojan ISFSI.

co-owners use to provide decommissioning financial assurance have been previously approved by the NRC and are documented in the Trojan ISFSI Safety Analysis Report.³

As allowed by 10 CFR 50.75(e)(1)(ii)(A), the external trust fund is the exclusive mechanism relied upon by PGE and PP&L to fund each utility's respective portion of Trojan ISFSI decommissioning costs. As specified in 10 CFR 50.75(e)(1)(ii), the funding of this trust is established such that money is set "aside periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected." Based on the current fund contribution schedule, the external trusts maintained by PGE and PP&L will be fully funded to cover PGE's and PP&L's portions of Trojan ISFSI decommissioning costs no later than 2011, well before the anticipated termination of ISFSI storage operations.

It is noted that the use of 10 CFR 50.75(e) financial assurance methods satisfies regulatory requirements while simultaneously allowing for consistency between the financial assurance methods used for Trojan Nuclear Plant decommissioning and those used for Trojan ISFSI decommissioning. This consistency has been especially advantageous because of differences in the financial assurance methods specified in 10 CFR 50.75(e) as compared to those in 10 CFR 72.30(c), such that using the same requirements (i.e., those in 10 CFR 50.75[e]) for both the Trojan Nuclear Plant and Trojan ISFSI decommissioning has allowed for more straightforward implementation (e.g., maintaining a single decommissioning trust for the collection of funds for both the Trojan Nuclear Plant and Trojan ISFSI decommissioning costs).

An NRC final rule effective December 24, 2003 ("Decommissioning Trust Provisions," 67 FR 78332 dated December 24, 2002), included a change to 10 CFR 72.30(c)(5) that from a literal interpretation would preclude PGE and PP&L from continuing to apply the provisions of 10 CFR 72.30(c)(5) following termination of the Trojan Nuclear Plant license issued under 10 CFR 50. Specifically, prior to this final rule becoming effective the financial assurance methods allowed by 10 CFR 72.30(c)(5) (i.e., the use of 10 CFR 50.75 methods) were applicable to "electric utility licensees." It was this earlier version of 10 CFR 72.30(c)(5) under which the Trojan ISFSI Decommissioning Plan, including the funding and financial assurance provisions, was approved by the NRC as part of the Trojan ISFSI license application. Clearly, prior to the change to 10 CFR 72.30(c)(5) effective December 24, 2003, termination of the Trojan Nuclear Plant license issued under 10 CFR 50 would not have had any significant impact on Trojan ISFSI decommissioning financial assurance, since following 10 CFR 50 license termination the Trojan

³ As required by 10 CFR 72.30(a) and (b), PGE's application for the Trojan ISFSI license included a Decommissioning Plan that included a decommissioning funding plan containing information on how reasonable assurance will be provided that funds will be available to decommission the Trojan ISFSI. The NRC approved PGE's license application and issued Trojan ISFSI License No. SNM-2509 on March 31, 1999, as amended via NRC approval dated October 23, 2002. The Trojan ISFSI Decommissioning Plan, including the decommissioning costs estimate and funding plan, is incorporated into the Trojan ISFSI Safety Analysis Report, Section 9.8.

co-owners would continue to be electric utility licensees, and thus continued use of the financial assurance methods of 10 CFR 50.75 would still satisfy the requirements of 10 CFR 72.30(c).

However, following the December 24, 2003, rule change, the wording of 10 CFR 72.30(c)(5) was changed from being applicable to "electric utility licensees" to "licensees who are issued a power reactor license under Part 50." Even with this rule change, until the Trojan Nuclear Plant 10 CFR 50 license is terminated, PGE's and PP&L's existing financial assurance methods continue to meet the decommissioning financial assurance requirements of 10 CFR 72.30(c)(5) and 10 CFR 50.75(e). However, following termination of the Trojan Nuclear Plant 10 CFR 50 license, the Trojan ISFSI co-owners will no longer be "licensees who are issued a power reactor license under Part 50," and thus the financial assurance methods of 10 CFR 72.30(c)(5) will no longer be available to the Trojan co-owners that currently use this allowance (i.e., PGE and PP&L). Therefore, PGE is seeking this exemption to the financial assurance requirements of 10 CFR 72.30(c), to the extent that following termination of the Trojan Nuclear Plant license issued under 10 CFR 50, the requirements of 10 CFR 50.75(e) and (h), via 10 CFR 72.30(c)(5), would continue to be applied to provide decommissioning financial assurance for the Trojan ISFSI.

It should be noted that the primary purpose of the rulemaking effective December 24, 2003, was to add requirements to 10 CFR 50.75 specifying that decommissioning trust agreements be in a form acceptable to the NRC. The change to 10 CFR 72.30(c)(5) as described above was not part of the associated proposed rulemaking ("Decommissioning Trust Provisions," 66 FR 29244 dated May 30, 2001), but rather appeared in the final rule issuance with no previous opportunity for public comments (as there was for the changes proposed to 10 CFR 50.75). As stated in the final rule issuance,⁴ "[i]n response to a comment, paragraph 72.30(c)(5) has been modified for consistency with §50.75(e) and (h), as a conforming change." This explanation supports the change to 10 CFR 72.30(c)(5) that replaced "§50.75(e)(1) and (3) of this chapter" with "10 CFR 50.75(b), (e), and (h), as applicable." Since the change in wording from "In the case of electric utility licensees" to "In the case of licensees who are issued a power reactor license under Part 50 of this chapter" was discussed in neither the May 30, 2001, proposed rulemaking nor the December 24, 2002, final rulemaking, the purpose or intent of this change, if indeed this change was intentional, is not known.

Furthermore, had this change been included in the proposed rulemaking, PGE would have included with its other comments on this proposed rulemaking⁵ a dissenting comment based on the impact of such a wording change, following termination of a license issued under 10 CFR 50, on the financial assurance methods already approved by the NRC for use by the Trojan ISFSI co-owners. Specifically, 10 CFR 50.75(e)(1)(ii)(A) allows PGE and PP&L, as licensees that recover the estimated total cost of decommissioning through rates established by ratemaking

⁴ 67 FR 78333 dated December 24, 2002. Similar discussion of the change to 10 CFR 72.30(c)(5) is also at 67 FR 78343, 78348, and 78352 dated December 24, 2002.

⁵ PGE's comments on the proposed rulemaking were submitted via letter VPN-030-2001 dated August 13, 2001.

regulation, to use an external trust as the exclusive mechanism relied upon for providing financial assurance for decommissioning. The financial assurance methods specified by 10 CFR 72.30(c) include no such allowance. Rather, 10 CFR 72.30(c)(3) requires that an external sinking fund (i.e., trust fund) be "coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund." Thus, following termination of the Trojan Nuclear Plant 10 CFR 50 license, the wording change in 10 CFR 72.30(c)(5) would require PGE and PP&L ratepayers to incur additional and unanticipated costs associated with securing a surety method (e.g., letter of credit) until such time that PGE's and PP&L's respective external trusts are fully funded for Trojan ISFSI decommissioning. With no previous opportunity to provide comments on this financial impact of the afore-described wording change that appeared in the December 24, 2002 final rule publication, PGE is requesting the exemption as previously detailed.

Finally, it is particularly noteworthy that application of the financial assurance regulations of 10 CFR 72.30(c) in the particular circumstances discussed above is not necessary to achieve the underlying purpose of the rule. Based on the above, it is clear that the NRC's approval of this exemption request will not affect the methods that the NRC has already approved for use by the Trojan ISFSI co-owners to provide Trojan ISFSI decommissioning financial assurance. Specifically, as allowed by 10 CFR 50.75(e)(1)(ii)(A), PGE and PP&L would continue to rely upon an external trust fund as the exclusive method to assure funds for each utility's respective portion of Trojan ISFSI decommissioning costs. Furthermore, following approval of this exemption request, PGE and PP&L would continue to make periodic contributions to their respective external trust funds, which are segregated from company assets and outside company administrative control. As indicated above, based on the current trust fund contribution schedule, the external trusts maintained by PGE and PP&L will be fully funded to cover PGE's and PP&L's portions of Trojan ISFSI decommissioning costs no later than 2011, well before the anticipated termination of ISFSI storage operations. Therefore, this specific exemption will not significantly affect the underlying intent of the NRC's financial assurance regulations established in 10 CFR 72.30(c), while eliminating unnecessary and unwarranted costs to PGE and PP&L ratepayers.

REGULATORY BASIS FOR EXEMPTION REQUEST

The provisions of 10 CFR 72.7 allow specific exemptions from the requirements of 10 CFR 72 provided the exemptions are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest. As described below, the specific exemption requested herein from the financial assurance requirements of 10 CFR 72.30(c) for Trojan ISFSI decommissioning satisfies the criteria and requirements of 10 CFR 72.7.

Specific Exemption is Authorized by Law

The specific exemption from the financial assurance requirements of 10 CFR 72.30(c) as requested herein for Trojan ISFSI decommissioning is authorized by law. Specifically, as

described previously, use of 10 CFR 50.75(e) and (h) financial assurance requirements by 10 CFR 72 licensees that also are holders of licenses issued under 10 CFR 50 is currently allowed by 10 CFR 72.30(c)(5). Prior to December 24, 2003, use of 10 CFR 50.75(e) financial assurance requirements by 10 CFR 72 licensees was allowed for any electric utility that held a 10 CFR 72 license, and no regulatory basis was provided in the rulemaking process that would suggest that the December 24, 2003, change was promulgated as a result of or associated with any proposition or new interpretation of law. Furthermore, the NRC previously approved PGE's and PP&L's use of the financial assurance methods of 10 CFR 50.75(e)(1)(ii)(A), via 10 CFR 72.30(c)(5), allowing an external trust fund to be used by both PGE and PP&L as the exclusive mechanism for providing financial assurance for Trojan ISFSI decommissioning. Based on the above, the specific exemption from the financial assurance requirements of 10 CFR 72.30(c) as requested herein for Trojan ISFSI decommissioning as described above is authorized by law.

Specific Exemption Will Not Endanger Life or Property or the Common Defense and Security

The specific exemption from the financial assurance requirements of 10 CFR 72.30(c) as requested herein for Trojan ISFSI decommissioning will not endanger life or property. The specific exemption requested herein is strictly administrative in nature, and does not impact Trojan ISFSI storage operations or the capability to complete decommissioning of the Trojan ISFSI. Furthermore, this exemption does not have any reasonable potential to (1) foreclose release of the Trojan ISFSI site for unrestricted use; (2) result in significant environmental impacts not previously reviewed; or (3) result in there no longer being reasonable assurance that adequate funds will be available for decommissioning. Rather, as described above, the proposed specific exemption would allow the Trojan ISFSI co-owners to continue to use financial assurance methods for Trojan ISFSI decommissioning that have already been approved by the NRC and that are consistent with the underlying intent of existing NRC regulatory requirements. Therefore, the proposed specific exemption from the financial assurance requirements of 10 CFR 72.30(c) as requested herein for Trojan ISFSI decommissioning will not endanger life or property.

The specific exemption from the financial assurance requirements of 10 CFR 72.30(c) as requested herein for Trojan ISFSI decommissioning will not endanger the common defense and security as defined in the Atomic Energy Act (42 USC 2014, Definitions) and in 10 CFR 70.4, "Definitions." As indicated above, the specific exemption requested herein is strictly administrative in nature, and does not involve information or activities that could potentially impact the common defense and security of the United States. Therefore, the proposed specific exemption from the financial assurance requirements of 10 CFR 72.30(c) as requested herein for Trojan ISFSI decommissioning will not endanger the common defense and security.

Specific Exemption is Otherwise in the Public Interest

The specific exemption from the financial assurance requirements of 10 CFR 72.30(c) as requested herein for Trojan ISFSI decommissioning is in the public interest. Specifically, the proposed specific exemption would eliminate any potential for additional and unanticipated financial assurance costs to PGE and PP&L ratepayers as described previously, while allowing the Trojan ISFSI co-owners to continue to use financial assurance methods for Trojan ISFSI decommissioning that have already been approved by the NRC and that are consistent with the underlying intent of existing NRC regulatory requirements. The alternative to the specific exemption proposed herein – to change the existing NRC-approved ISFSI decommissioning financial assurance methods, following termination of the Trojan Nuclear Plant 10 CFR 50 license, to methods specified in 10 CFR 72.30(c) – would represent additional costs to ratepayers with no offsetting benefit. Therefore, the specific exemption from the financial assurance requirements of 10 CFR 72.30(c) as requested herein for Trojan ISFSI decommissioning is in the public interest.

POTENTIAL ENVIRONMENTAL IMPACT

The proposed action does not involve significant environmental impacts. Although PGE recognizes that this exemption request does not constitute an amendment to the Trojan ISFSI license, the proposed exemption is in an area – changes in administrative requirements – for which the NRC in 10 CFR 51.22(b), 10 CFR 51.22(c)(10)(ii), and 10 CFR 51.22(c)(11) has determined that a license amendment would meet the criteria for categorical exclusion from the need for either an environmental assessment or an environmental impact statement.

Notwithstanding the above, the specific exemption from the financial assurance requirements of 10 CFR 72.30(c) as requested herein is strictly administrative in nature, and as such does not impact Trojan ISFSI storage operations or the capability to complete decommissioning of the Trojan ISFSI. This exemption does not have any reasonable potential to (1) foreclose release of the Trojan ISFSI site for unrestricted use; (2) result in significant environmental impacts not previously reviewed; or (3) result in there no longer being reasonable assurance that adequate funds will be available for decommissioning.

Specifically, the administrative nature of this exemption is such that it: (1) would not increase the probability or the consequences of a radiological accident; (2) would not change the types or quantities of effluents that may be released offsite; and (3) would not significantly increase the allowable individual or cumulative radiation exposure. Thus, the proposed exemption would result in no significant radiological environmental impact. With regard to potential nonradiological impacts, the exemption requested herein does not have the potential to result in nonradiological effluents and has no other environmental impact. Therefore, there are no significant nonradiological impacts associated with the proposed specific exemption.