April 15, 2005

Dr. Melinda Krahenbuhl
Reactor Administrator
122 S. Central Campus Drive
Room 104
University of Utah
Salt Lake City, UT 84112

SUBJECT: UNIVERSITY OF UTAH RESEARCH REACTOR - EXEMPTION FROM THE REQUIREMENTS OF SECTION 109(A) OF 10 CFR PART 2, REGARDING THE EFFECT OF TIMELY LICENSE RENEWAL APPLICATION (TAC No. MC6715)

Dear Dr. Krahenbuhl:

The Commission has approved the enclosed exemption from the specific requirements of Title 10 of the *Code of Federal Regulations* (10 CFR), Part 2, Section 109(a), for University of Utah research reactor. This action is in response to an application from you, dated April 13, 2005. Specifically, this exemption allows the University of Utah to have submitted a license renewal application for the research reactor less than 30 days prior to the expiration of the operating license, while maintaining the protection of the timely renewal doctrine contained in 10 CFR 2.109(a), subject to the conditions imposed by the exemption.

A copy of the exemption is enclosed and is being forwarded to the Office of the *Federal Register* for publication.

Sincerely,

/RA/

Marvin M. Mendonca, Senior Project Manager
Research and Test Reactor Section
New, Research and Test Reactors Program
Division of Regulatory Improvement Programs
Office of Nuclear Reactor Regulation

Docket No. 50-407

Enclosure: Exemption

cc w/encl: See next page

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University of Utah Docket No. 50-407

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

UNIVERSITY OF UTAH

DOCKET NO. 50-407

UNIVERSITY OF UTAH TRIGA NUCLEAR REACTOR FACILITY

EXEMPTION

1.0 BACKGROUND

University of Utah (the licensee), is the holder of Facility Operating License No. R-126, which authorizes operation of the University of Utah Nuclear Reactor Facility, an open pool TRIGA fueled research reactor facility, licensed to operate at power levels up to 100 kilowatts, located in Salt Lake City, Utah. 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 current operating license expires at midnight on April 17, 2005.

By letter dated April 13, 2005, the licensee requested an exemption from the regulation, 10 CFR 2.109(a). Specifically, the requested exemption allows the University of Utah to have submitted a license renewal application for the research reactor less than 30 days prior to the expiration of the operating license, while maintaining the protection of the timely renewal doctrine contained in 10 CFR 2.109(a). By letter dated March 25, 2005, the licensee applied for renewal of the research reactor license. In the April 13, 2005 letter, the licensee stated it was unable to submit a renewal application 30 days prior to license expiration because: (1) compliance with 10 CFR 2.109 created an undue hardship not intended by this regulation due to the limited staff (currently only two licensed senior reactor operators) and a change in the

Reactor Administrator (administrative change) within the previous calendar year, and (2) misinterpretation of the requirements of 10 CFR 2.109(a). The licensee also in the April 13, 2005 letter, indicated that the exemption from the 30 day rule will not present: (1) an undue risk to the public health and safety and is consistent with the common defense and security, and that the reactor and material would be protected under the current license provisions; (2) the licensee made a good faith effort to comply with the regulation; and (3) there is no good alternatives for divesting the licensee of material held under the license. The licensee indicated that, in light of these and other factors, it could not prepare and file a sufficient license renewal application 30 days prior to the license expiration specified in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 2, Section 109(a), "Effect of timely renewal application."

2.0 REQUEST/ACTION

Section 109(a) of 10 CFR Part 2 states: "Except for the renewal of an operating license for a nuclear power plant under 10 CFR 50.21(b) or 50.22, if, at least 30 days prior to the expiration of an existing license authorizing any activity of a continuing nature, the licensee files an application for a renewal or for a new license for the activity so authorized, the existing license will not be deemed to have expired until the application has been finally determined."

The licensee's application requested an exemption from the timing requirements of 10 CFR 2.109(a), for submittal of the research reactor license renewal application. The exemption would allow the submittal of the renewal application with less than 30 days prior to expiration of the operating license while maintaining the protection of the timely renewal provision in 10 CFR 2.109(a).

3.0 DISCUSSION

Pursuant to the requirements of 10 CFR 50.12, the Commission may grant an exemption from the requirements of Part 50 when the exemption is (1) authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common

defense and security, and (2) special circumstances are present as defined in 10 CFR 50.12(a)(2). The operation of the University of Utah research reactor since initial licensing in 1975 and license renewal in 1985 has been acceptable to ensure protection of the public health and safety and consistent with the common defense and security. Further, the requested exemption meets two special circumstances: 10 CFR 50.12(a)(2)(ii), "[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule;" and 10 CFR 50.12(a)(2)(iii), "[c]ompliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated."

The purpose of 10 CFR 2.109(a), as it is applied to NRC licensees, is to implement the "timely renewal" doctrine of Section 9(b) of the Administrative Procedure Act (APA), 5 U.S.C. §558(c), which states:

> When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

The underlying purpose of this "timely renewal" provision in the APA is to protect a licensee who is engaged in an ongoing licensed activity and who has complied with agency rules in applying for a renewed or new license from facing license expiration as the result of delays in the administrative process.

Submittal of the license renewal application approximately 24 days, instead of 30 days, prior to expiration of the operating license provides reasonable time prior to expiration to allow the staff to ensure that the application is essentially complete and sufficient and the licensee intends to continue to operate the facility. The NRC's current schedule for review of research reactor license renewal applications is to complete its review and make a decision on issuing

the renewed license within 48 months of receipt. Meeting this schedule is based on a complete and sufficient application, and on the review being completed in accordance with the NRC's established license renewal review schedule. Also, completing the research reactor license renewal review process on schedule is, of course, dependent on licensee cooperation in meeting established schedules for submittal of any additional information required by the NRC, and the resolution of all issues demonstrating that issuance of a renewed license is warranted.

The second special circumstance involves undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated. The research reactor is operated solely for educational and research purposes. The reactor is a part of the Nuclear Engineering Program, but it also supports the curriculum of the other engineering disciplines in the University of Utah College of Engineering. The loss of this resource for an extended period of time during a license renewal process is an undue hardship.

In summary, the licensee has demonstrated that application of the subject regulation is not necessary to achieve the underlying purpose of the rule and is an undue hardship, thus meeting the criterion specified in 10 CFR 50.12(a)(2)(ii) and (iii). Accordingly, the NRC staff agrees that special circumstances are present to justify the requested exemption.

Therefore, the exemption is contingent upon the following condition being met:
to ensure timely completion of the review process, the licensee must provide any requested information as necessary to support the completion of the NRC staff's safety and environmental reviews in accordance with the review schedule issued by the NRC.

Pending final action on the license renewal application, the NRC will continue to conduct all regulatory activities associated with licensing, inspection, and oversight, and will take whatever action may be necessary to ensure adequate protection of the public health and

safety. The existence of this exemption does not affect NRC's authority, applicable to all licenses, to modify, suspend, or revoke a license for cause, such as a serious safety concern.

4.0 CONCLUSION

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. In addition, special circumstances exist to justify the proposed exemption. Therefore, the Commission hereby grants the licensee an exemption from the requirement of 10 CFR 2.109(a) for the University of Utah research reactor. Specifically, this exemption will allow the University of Utah to have submitted a license renewal application for the research reactor less than 30 days prior to the expiration of the operating license, while maintaining the protection of the timely renewal doctrine contained in 10 CFR 2.109(a), subject to the condition imposed by this exemption.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment. THIS EXEMPTION IS EFFECTIVE UPON ISSUANCE.

Dated at Rockville, Maryland, this 15th day of April 2005.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

David B. Matthews, Director
Division of Regulatory Improvement Programs
Office of Nuclear Reactor Regulation