

July 14, 2008

Mr. Dave Baxter
Vice President, Oconee Site
Duke Power Company LLC
7800 Rochester Highway
Seneca, SC 29672

SUBJECT: OCONEE NUCLEAR STATION, UNITS 1, 2, AND 3, BASIS FOR NOT
GRANTING EXEMPTIONS (TAC NOS. MD7253, MD7254, AND MD7255)

Dear Mr. Hamilton:

By letter dated October 30, 2007, you requested exemptions from Title 10 of the *Code of Federal Regulations* (10 CFR), Section 55.53(f)(2), which delineates, in part, the requirements for the use of senior reactor operators limited to fuel handling activities. We have reviewed your request and concluded that the exemption should not be granted, and our basis for not granting the exemptions is enclosed.

If you have any further questions on this matter, please contact me at 301-415-1419.

Sincerely,

/RA/

Leonard N. Olshan, Project Manager
Plant Licensing Branch II-1
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket Nos. 50-269, 50-270,
and 50-287

Enclosure:
Basis for Not Granting Exemptions

cc w/encl: See next page

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BASIS FOR NOT GRANTING EXEMPTIONS FROM 10 CFR 55.53(f)(2)

BY THE OFFICE OF NUCLEAR REACTOR REGULATION

DUKE ENERGY CAROLINAS, LLC

OCONEE NUCLEAR STATION, UNITS 1, 2, AND 3

DOCKET NOS. 50-269, 50-270, AND 50-287

INTRODUCTION

On October 30, 2007, Duke Power Company LLC, now Duke Energy Carolinas, LLC, (Duke Energy) requested on behalf of Oconee Nuclear Station, Units 1, 2, and 3, a specific exemption, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 55.11, from 10 CFR 55.53(f)(2), which delineates, in part, the requirements for use of senior reactor operators (SROs) limited to fuel-handling activities. Duke Energy is requesting exemptions from the requirement to spend one shift under the direction of an SRO, provided the SRO has directly supervised fuel-handling activities for at least 36 hours during the previous 8 months.

On October 25, 2005, Duke Energy previously requested the same exemptions, except it was pursuant to 10 CFR 20.2301. Duke Energy requested exemptions from the requirement to spend one shift under the direction of an SRO, provided the SRO has directly supervised refueling activities within the previous 12 months. By letter dated October 10, 2006, Duke Energy withdrew this request for exemptions.

The Office of Nuclear Reactor Regulation's Office Instruction LIC-103, "Exemptions from NRC Regulations," Revision 1, provides the Nuclear Regulation Commission (NRC) staff's guidance on processing requests for exemptions. Generally, if a sufficient basis exists, the NRC staff will issue an exemption. Hence, Duke Energy's exemption request was reviewed by the NRC staff to determine whether or not a sufficient basis or special circumstances exist to support the granting of the specific exemption request.

Although Duke Energy submitted its exemption request pursuant to 10 CFR 55.11, the NRC staff is expected to use the principles described in Section 4.6 of LIC-103 to determine whether or not the requirements in 10 CFR 50.12(a) are met for granting an exemption.

BASIS FOR NOT GRANTING THE EXEMPTIONS

The NRC staff arrived at its conclusion by addressing the following questions:

Will the exemptions be authorized by law?

Section 55.11 states that the Commission may "grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property and are otherwise in the public interest."

The NRC staff disagrees with Duke Energy's assertion that its specific exemption is authorized by law. Contrary to Duke Energy's assertion, 10 CFR 50.12(a)(2) states that the Commission will not consider granting an exemption unless special circumstances are present. Duke Energy's justification for its exemption request does not support a special circumstance situation.

Will the exemption not present undue risk to the public health and safety?

Section 55.12(a)(1) states, in part, that the Commission may grant exemptions from the requirements of the regulations in this part if exemptions will not present an undue risk to the public health and safety. Section 55.11 also reiterates the same view "... and will not endanger life or property..."

The NRC staff disagrees with Duke Energy's assertion that, if granted, its requested exemption will not endanger life or property (e.g., present an undue risk to the public health and safety). Public health and safety relies on Duke Energy's licensed SROs, including those limited to fuel handling, whose qualifications and status have been certified to be current and valid and that proficiency watch-standing has been completed under the direction of a senior operator and in the position to which the individual will be assigned.

NUREG-1021, "Operator Licensing Examination Standards for Power Reactors," notes in Chapter ES-605, "License Maintenance, License Renewal Applications, and Request for Administrative Reviews and Hearings," Section C.2.g, that watch-standing proficiency requirements are important because they are done under the direction of and in the presence of an active SRO or licensed SRO (LSRO) who directly oversees the inactive LSRO's (e.g., trainee's) activities, provides feedback as appropriate, and enables an authorized representative of the facility licensee to certify that the individual operator's qualifications are current and valid, as required by 10 CFR 55.53(f)(1).

The NRC staff believes that Duke Energy's proposal to eliminate the watch-standing proficiency, albeit one shift, and to rely solely on non-current LSRO self determinations for proficiency, would establish an unintended precedence for permitting self-directed activities on the refueling floor, thereby eliminating the opportunity for meaningful feedback, which could cast doubt on the validity of the resulting certification. Duke Energy's proposal to allow the exemption, only if the non-active LSRO has served in the position of a refueling fuel-handling supervisor for 36 hours during the previous 8 months, provides no assurance that individual(s) are in fact qualified (or have maintained their qualifications current) to carry out the duties and responsibilities covered by the licensed position since no proficiency under the direction of an SRO occurs.

The NRC staff believes that conducting fuel-handling functions with LSROs who have not maintained and met the Commission's proficiency watch-standing requirement poses an undue risk to the public health and safety since refueling activities involve individuals who, under the direction and in the presence of an LSRO, manipulates the controls to load or unload highly radioactive spent fuel (and/or new fuel) into, out of, or within the reactor vessel.

Will the exemptions be consistent with the common defense and security?

Section 55.12(a)(1) also states, in part, that the Commission may grant exemptions from the requirements of the regulations in this part if exemptions are consistent with the common

defense and security. Section 55.11 also reiterates the same view "...and are otherwise in the public interest."

The NRC staff finds that Duke Energy's exemption request justification did not address and/or discuss how the exemption, if granted, is in the public's interest. Instead, Duke Energy communicated that approval of the exemption is in its interest because, if granted, it would allow greater flexibility in the use of licensed personnel in support of refueling activities. The NRC staff believes that the public's interest is more important than Duke Energy's interest and benefit.

Are special circumstances present?

Section 50.12(a)(2) states, in part, that the Commission will not consider granting an exemption unless special circumstances are present.

The NRC staff finds that Duke Energy's exemption request/justification presented no "special circumstances" to warrant serious consideration for granting an exemption to 10 CFR 55.53(f)(2). For example:

1. No case was made (nor could any be made) that application of 10 CFR 55.53(f)(2) conflicts with other rules or requirements of the Commission.
2. No case was made that application of 10 CFR 55.53(f)(2) would not serve the underlying purpose of the rule. Instead, Duke Energy attempts to make a case that application of 10 CFR 55.53(f)(2) is not necessary, "...Duke believes that this "re-activation" is unnecessary..." to achieve the underlying purpose of the rule. The NRC staff disagrees, since a key regulatory element regarding LSRO proficiency watch-standing is missing from Duke Energy's argument. The NRC staff pointed out that because the regulations require a licensee to demonstrate proficiency in the position to which he/she will be assigned, it is important that the LSRO licensee maintain proficiency in the shift functions required for refueling. Since core alteration is a serious matter and important to safety, proficiency must first be demonstrated under direction. Proficiency and its certification can not be demonstrated if the "under-direction" aspect is removed. Because the facility licensee is seeking a proficiency exemption and replacing it with reliance upon self-certification for re-activation purposes, it circumvents the underlying purpose of the rule.
3. No case was made, nor could any be made, that compliance with 10 CFR 55.53(f)(2) 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. Duke Energy asserts that a human resource saving could be realized, but does not provide any evidence that undue hardship exists. The NRC staff notes that since the regulation was promulgated in 1987, Duke Energy has been able to comply with and meet the requirement without a specific exemption, a period of 21 years. The NRC staff notes that the total number of professional staff hours

for seven LSRO individuals' standing proficiency watches would be approximately 84 hours (assuming a single 12-hour shift for each LSRO exemption being requested). The total number of hours of on-shift refueling functions under-direction do not indicate costs that are significantly in excess of those incurred by others similarly situated. Finally, no other facility licensee similarly situated has requested an exemption to the same rule.

4. No case was made, nor could any be made, that the exemptions, if granted, would result in benefit to the public health and safety that compensates for any decrease in safety that may result from the grant of the exemption.
5. Duke Energy's exemption request, if granted, would provide only temporary relief from the proficiency requirement of 10 CFR 55.53(f)(2) for the 2008 Oconee Unit 1 fall refueling. However, it makes no assurances that a good faith effort to comply with the regulation would be made. Even more problematic, if an exemption were granted for the fall 2008 refueling, there is nothing to preclude seeking another exemption for the next refueling outage and the next, and so on, based on the granting of this request. The NRC staff believes that should an exemption be granted, there would be no incentive on the part of Duke Energy in the future to make a good faith effort to comply with the existing regulation.
6. No other material circumstances were made by Duke Energy that were not considered when the regulation was adopted which would be in the public interest to grant an exemption.

CONCLUSION

The NRC staff has concluded, based on the considerations discussed above, that: (1) there are no special circumstances present that warrant a specific exemption, (2) the facility licensee's continued compliance with the requirements of 10 CFR 55.53(f)(2) is in the public's interest, and (3) the issuance of a specific exemption to the regulation is not recommended and would more than likely be denied since it would defeat the underlying purpose of the rule which ensures that LSROs limited to fuel-handling LSRO qualifications and status are current and valid and are certifiable.

Therefore, the NRC has concluded that the exemptions requested in Duke Energy's letter of October 30, 2007, should not be granted.

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Date: July 14, 2008

Oconee Nuclear Station, Units 1, 2, and 3

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