

NUCLEAR REGULATORY COMMISSION
NORTHERN STATES POWER COMPANY - MINNESOTA
PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2
DOCKET NOS. 50-282 AND 50-306
[NRC-2010-0046]
EXEMPTION

1.0 BACKGROUND

Northern States Power Company, a Minnesota corporation (NSPM, the licensee) is the holder of Facility Operating License Nos. DPR-42 and DPR-60, which authorize operation of the Prairie Island Nuclear Generating Plant, Units 1 and 2 (PINGP). 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 pressurized-water reactors located in Goodhue County, Minnesota.

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, 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 five of these new requirements that PINGP 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 5, 2009, as supplemented by letters dated November 30 and December 17, 2009, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's November 5 and December 17, 2009, letters, and certain portions of its November 30, 2009 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML100050096), letter, contain security-related information and, accordingly, are not available to the public. The licensee has requested an exemption from the March 31, 2010, compliance date identified in 10 CFR 73.55(a)(1), stating that specific parts of the new requirements will require more time to implement before all requirements can be met. Specifically, the request is to extend the compliance date for five specific requirements from the current March 31, 2010, deadline to June 30, 2011. Being granted this exemption for the five requirements would allow the licensee to complete the modifications designed to provide significant upgrades to the security system 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.

NRC approval of this exemption would, as noted above, extend the required compliance date for the requirements specified in the licensee's request from March 31, 2010, to June 30, 2011, for five 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 Part 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 provided to the Commission on July 9, 2008, 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 Power Reactor Security Requirements rule (74 FR 13925, March 27, 2009), 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 these changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a generic industry 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 an exemption is therefore consistent with the approach set forth by the Commission and discussed in the June 4, 2009, letter.

PINGP Schedule Exemption Request

The licensee provided detailed information in Enclosures 1 and 2 of its November 5, 2009, submittal letter requesting an exemption, as well as in its supplemental letter dated December 17, 2009. It describes a comprehensive plan to upgrade the security capabilities of the PINGP site and provides a timeline for achieving full compliance with the new regulation. Enclosures 1 and 2 contain security-related information regarding the site security plan, details of specific portions of the regulation for which the site cannot be in compliance by the March 31, 2010, deadline and why, the required changes to the site's security configuration, and a timeline with critical path activities that will bring the licensee into full compliance by June 30, 2011. The licensee stated that the schedule for the physical modifications associated with this request were developed based on current information and anticipated impediments to construction such as planned refueling outages at both Units 1 and 2 and winter weather conditions that may impair construction due to frozen ground or extreme cold that creates personnel safety issues.

Enclosure 2 to the November 5, 2009, submittal includes a timeline that provides dates indicating when (1) construction will begin on various phases of the project, (2) outages are scheduled for each unit, and (3) critical equipment will be ordered, installed, and become operational.

Notwithstanding the schedular 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 June 30, 2011, PINGP 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 provided adequate justification for its request for an exemption from the March 31, 2010, compliance date to June 30, 2011, with regard to the specified requirements of 10 CFR 73.55.

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 staff has determined that 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 specified requirements of 10 CFR 73.55 for this particular licensee. The security measures, that PINGP 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 an exemption from the March 31, 2010, compliance date for the five requirements specified in Enclosure 1 of the NSPM letter dated November 5, 2009, the licensee is required to be in full compliance by June 30, 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 6225; dated February 8, 2010].

This exemption is effective upon issuance.

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

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

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