



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 24, 2010

Mr. Timothy J. O'Connor
Site Vice President
Monticello Nuclear Generating Plant
Northern States Power Company - Minnesota (NSPM)
2807 West County Road 75
Monticello, MN 55362-9637

SUBJECT: MONTICELLO NUCLEAR GENERATING PLANT - ISSUANCE OF EXEMPTION
TO A SCHEDULAR REQUIREMENT OF 10 CFR 73.55 (TAC NO. ME2523)

Dear Mr. O'Connor:

In response to your application dated November 3, 2009, the U.S. Nuclear Regulatory Commission (NRC) has issued the enclosed exemption from the requirements of Title 10, *Code of Federal Regulations*, Part 50 (10 CFR 50), Section 73.55. Specifically, this action permits Northern States Power Company to complete certain requirements imposed by 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," by June 30, 2011, instead of March 31, 2010.

As is set forth in the exemption, the NRC staff finds that granting this exemption is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security.

A copy of the exemption has been forwarded to the Office of the *Federal Register* for publication.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter S. Tam".

Peter S. Tam, Senior Project Manager
Plant Licensing Branch III-1
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket No. 50-263

Enclosure:
Exemption

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
NORTHERN STATES POWER COMPANY OF MINNESOTA
MONTICELLO NUCLEAR GENERATING PLANT
DOCKET NOS. 50-263
EXEMPTION

1.0 BACKGROUND

Northern States Power Company of Minnesota (NSPM, the licensee) is the holder of Facility Operating License No. DPR-22, which authorizes operation of the Monticello Nuclear Generating Plant (MNGP). 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 facility consists of a General Electric boiling-water reactor located in Wright 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 two of these new

requirements that NSPM 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 3, 2009, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's November 3, 2009, letter contains security-related information and, accordingly, is not available to the public. The licensee submitted a redacted version of its exemption request on December 15, 2009, which is publicly available. The licensee has requested an exemption 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 items from the current March 31, 2010, deadline to June 30, 2011. Being granted this exemption for the two items would allow the licensee to complete the modifications designed to update aging equipment and incorporate state-of-the-art technology 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.

This exemption would, as noted above, allow an extension from March 31, 2010, until June 30, 2011, to allow for temporary noncompliance with the new rule in two specified 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 exemption will 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, 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 a request to generically 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.

MNGP's Schedule Exemption Request

The licensee provided detailed information in its November 3, 2009, request for exemption. It described a comprehensive plan to install equipment related to certain requirements in the new Part 73 rule and provided a timeline for achieving full compliance with

the new regulation. The submittal contains security-related information regarding the site security plan, details of the specific requirements 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 cannot be completed by the deadline, and a timeline with critical path activities that will bring MNGP into full compliance by June 30, 2011. The timeline provides dates indicating when (1) construction will begin on various phases of the project (e.g., buildings, fences); (2) critical equipment will be ordered, installed, tested and become operational; and (3) anticipated impediments to construction such as planned refueling outages and winter weather conditions that may impair construction.

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, MNGP 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 submittal and concludes that the licensee has provided adequate justification for its request for an extension of the 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 long-term benefits that will be realized when the modifications to the two specific items are complete justify exceeding the full compliance date in the case of this particular licensee. The security measures that the licensee needs additional time to implement are new

requirements imposed by the 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, the NRC staff concludes 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.

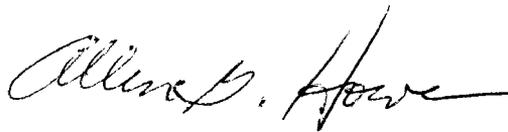
As per the licensee's request and the NRC's regulatory authority to grant an exemption from the March 31, 2010, deadline for the requirement specified in the licensee's November 3, 2009, submittal, the licensee is required to be in full compliance by June 30, 2011. In achieving compliance, the licensee 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 6224, dated February 8, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 24th day of February.

FOR THE NUCLEAR REGULATORY COMMISSION

A handwritten signature in black ink, appearing to read "Allen G. Howe". The signature is fluid and cursive, with a long horizontal stroke at the end.

Allen G. Howe, Acting Director
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Mr. Timothy J. O'Connor
 Site Vice President
 Monticello Nuclear Generating Plant
 Northern States Power Company - Minnesota (NSPM)
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Sincerely,

/RA/
 Peter S. Tam, Senior Project Manager
 Plant Licensing Branch III-1
 Division of Operating Reactor Licensing
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Docket No. 50-263

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Accession No.: Letter **ML093441622** Exemption: **ML093441330** *Safety evaluation transmitted by memo dated 12/18/2009

OFFICE	NRR/LPL3-1/PM	NRR/LPL3-1/LA	NRR/LPL3-1/BC	NSIR/RSRLB/BC	NSIR/DSP/D
NAME	PTam	THarris	RPascarelli	DHuyck*	SMorris
DATE	01/12/10	12/29/09	02/19/10	12/18/09	01/20/10
	OGC	NRR/DORL/D(Acting)			
	MSpencer *NLO	AHowe			
	01/26/10	02/24/10			