

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
VIRGINIA ELECTRIC AND POWER COMPANY
NORTH ANNA POWER STATION, UNIT NOS. 1 AND 2
DOCKET NOS. 50-338 AND 50-339
EXEMPTION
[NRC-2010-0026]

1.0 BACKGROUND

The Virginia Electric and Power Company, (the licensee) is the holder of Facility Operating License Nos. NPF-4 and NPF-7, which authorize operation of the North Anna Power Station, Unit Nos. 1 and 2 (NAPS). 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 Louisa County, Virginia.

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 plans. 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 a certain requirement of these new requirements that NAPS 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 23, 2009, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." Certain portions of the licensee's November 23, 2009, letter contain proprietary and safeguards information and, accordingly, are not available to the public. The licensee has requested an exemption from the March 31, 2010, compliance date stating that it must perform the required upgrades to the NAPS security system before all of the Section 73.55 requirements can be met. Specifically, the request is to extend the compliance date for a certain requirement from the current March 31, 2010, deadline to August 31, 2010. Being granted this exemption for this item 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 requirement.

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.

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, NRC approval of the licensee's exemption request is authorized by law.

In the draft final power reactor security 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. Based on the above, 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 these changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected generic industry requests 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.

NAPS Schedule Exemption Request

The licensee provided adequate information in its November 23, 2009, letter requesting an exemption. It describes a comprehensive plan for implementing security system upgrades and provides a timeline for achieving full compliance with the new regulation. The site-specific information provided within the exemption request is relative to the requirements from which the

licensee requested exemption and demonstrates the need for modification to meet the requirement.

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 August 31, 2010, NAPS 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 submittal and concludes that the licensee has provided adequate justification for its request for an extension of the compliance date to August 31, 2010, with regard to a specific requirement of 10 CFR 73.55.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," an 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 the NAPS security system upgrades are complete justifies exceeding the March 31, 2010, full compliance date and is consistent with the scope of the modifications in the case of this particular licensee. The security measures NAPS 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, implementation deadline for the item specified in the licensee's November 23, 2009, letter, the licensee is required to be in full compliance with 10 CFR 73.55 by August 31, 2010. 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 4591, published January 28, 2010).

This exemption is effective upon issuance.

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

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

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