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

March 26, 2010

Vice President, Operations
Entergy Nuclear Operations, Inc.
James A. FitzPatrick Nuclear Power Plant
P.O. Box 110
Lycoming, NY 13093

SUBJECT: JAMES A. FITZPATRICK NUCLEAR POWER PLANT - EXEMPTION FROM THE REQUIREMENTS OF 10 CFR PART 73, SECTION 73.55 IMPLEMENTATION DEADLINE FOR PHYSICAL SECURITY PLANS (TAC NO. ME3115)

Dear Sir or Madam:

The Commission has approved the enclosed exemption from specific requirements of Title 10 of the *Code of Federal Regulations* (10 CFR), Part 73, Section 73.55, for the James A. FitzPatrick Nuclear Power Plant (JAFNPP, or the licensee). This action is in response to your application dated January 21, 2010, as supplemented by letters dated February 25 and March 2, 2010.

The licensee requested U.S. Nuclear Regulatory Commission (NRC) approval for an exemption from March 31, 2010, implementation date for certain security requirements of 10 CFR Part 73, "PHYSICAL PROTECTION OF PLANTS AND MATERIALS," for JAFNPP, issued by NRC in a Final Rule dated March 27, 2009 (74 FR 13926). The proposed exemption would allow an extension from the March 31, 2010, implementation date for some specific requirements, until December 31, 2010.

A copy of the exemption is enclosed. The exemption has been forwarded to the Office of the Federal Register for publication.

Sincerely,

BKVaidya

Bhalchandra K. Vaidya, Project Manager
Plant Licensing Branch I-1
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket No. 50-333

Enclosure:
Exemption

cc w/encl: Distribution via Listserv

7590-01-P

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

JAMES A. FITZPATRICK NUCLEAR POWER PLANT

DOCKET NO. 50-333

EXEMPTION

1.0 BACKGROUND

Entergy Nuclear Operations, Inc. (the licensee) is the holder of Facility Operating License No. DPR-59, which authorizes operation of the James A. FitzPatrick Nuclear Power Plant (JAFNPP). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a boiling-water reactor located in Oswego County in New York State.

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 four of these new requirements that JAFNPP 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 January 21, 2010, as supplemented by letters dated February 25 and March 2, 2010, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's letter dated January 21, 2010, and February 25, 2010, contain sensitive security information and, accordingly, are withheld from public disclosure in accordance with 10 CFR 2.390. The licensee has requested an exemption from the March 31, 2010, compliance date stating that due to the scope of the design, procurement, and installation activities and in consideration of impediments to construction such as winter weather conditions and equipment delivery schedules, completion of some of the new requirements contained in 10 CFR 73.55 will require additional time beyond March 31, 2010, before all requirements can be met. Specifically, the request to extend the compliance date is for four specific requirements from the current March 31, 2010, deadline to December 31, 2010. Being granted this exemption for the four items would allow the licensee to be in full compliance with the 10 CFR Part 73 Final Rule.

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 approval of this exemption, as noted above, would allow an extension for the implementation date from March 31, 2010, until December 31, 2010, with the new rule for four specified requirements. 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 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. 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 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.

JAFNPP Schedule Exemption Request

The licensee provided detailed information in letter dated January 21, 2010, requesting an exemption, as supplemented by letters dated February 25 and March 2, 2010. In its submissions, JAFNPP described a comprehensive plan including the scope of work such as the design, procurement, and installation activities, consideration of impediments to construction such as winter weather conditions and equipment delivery schedules, and provides a timeline for achieving full compliance with the new regulation. The licensee's submissions contain (1) sensitive security information regarding the site security plan, (2) details of specific portions of the regulation for which the site cannot be in compliance by the March 31, 2010, deadline and the reasons for the same, (3) the required changes to the site's security configuration, and (4) a timeline with critical path activities that will bring the licensee into full compliance by December 31, 2010. The timeline provides dates indicating when (1) construction will begin on various phases of the project (i.e., new roads, buildings, and fences), (2) outages are scheduled for each unit, and (3) critical equipment will be ordered, installed, tested and become operational.

Notwithstanding the schedule exemptions for these limited requirements, the licensee stated that it 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 December 31, 2010, JAFNPP 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 reviewed the licensee's submittals and concludes that the licensee has provided adequate justification for its request for an extension of the compliance date to December 31, 2010, with regard to four specified requirements 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 design, procurement, and installation activities described in the licensee's submissions, are complete, justifies extending the full compliance date in the case of this particular licensee. The security measures for which JAFNPP 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, the NRC 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 four items specified in the licensee's letter dated January 21, 2010, as supplemented by letters dated February 25 and March 2, 2010, the licensee is required to be in full compliance by December 31, 2010. In achieving full 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 14637; dated March 26, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 26th day of March, 2010.

FOR THE NUCLEAR REGULATORY COMMISSION

Joseph G. Giitter, Director
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

March 26, 2010

Vice President, Operations
Entergy Nuclear Operations, Inc.
James A. FitzPatrick Nuclear Power Plant
P.O. Box 110
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Sincerely,
/RA/
Bhalchandra K. Vaidya, Project Manager
Plant Licensing Branch I-1
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket No. 50-333
Enclosure:
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DATE	3/15/10	3/15/10	3/16/10	3/16/10	3/17/10

OFFICE	OGC	LPL1-1/BC	DORL/D
NAME	MSmith	NSalgado	JGiitter
DATE	3/18/10	3/19/10	3/26/10