

NUCLEAR REGULATORY COMMISSION

INDIAN POINT NUCLEAR GENERATING UNIT NOS. 1, 2, AND 3

DOCKET NOS. 50-003, 50-247 AND 50-286

EXEMPTION

[NRC-2010-0137]

1.0 BACKGROUND

Entergy Nuclear Operations, Inc. (the licensee) is the holder of Facility Operating License Nos. DPR-5, DPR-26, and DPR-64, which authorize operation of the Indian Point Nuclear Generating Unit Nos. 1, 2, and 3 (IP1, IP2, and IP3). The licenses provide, among other things, that the facilities are subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facilities consist of one permanently shut down reactor and two operating pressurized-water reactors located in Westchester 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 IP1, IP2, and IP3 now seek 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 28, 2010, as supplemented by letter dated March 8, 2010, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." Portions of the licensee's letter dated January 28, 2010, contain security-related information and, accordingly, are withheld from public disclosure in accordance with 10 CFR 2.390(d)(1). The licensee's supplemental letter dated March 8, 2010, is withheld in its entirety as security-related information in accordance with 10 CFR 2.390(d)(1). The licensee has requested an exemption from the March 31, 2010, compliance date stating that due to 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 activities to facilitate compliance with 10 CFR 73.55 will require additional time beyond March 31, 2010, before all requirements can be met. Specifically, the request is to extend the compliance date for four specific requirements from the current March 31, 2010, deadline to February 17, 2011. Being granted this exemption for the four items would allow the licensee to complete the modifications designed to meet the new 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 of compliance with the new rule from March 31, 2010, until February 17, 2011, in four specific areas. 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 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 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 reach 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 requirements of the rule, 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.

IP1, IP2, and IP3 Schedule Exemption Request

The licensee provided detailed information in a letter dated January 28, 2010, requesting an exemption, as supplemented by letter dated March 8, 2010. It describes a comprehensive plan to improve certain physical security measures, and provides a timeline for achieving full compliance with the new regulation. The licensee's letter dated January 28, 2010, as supplemented by letter dated March 8, 2010, contains (1) security-related 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 therefore, (3) the required changes to the site's security configuration, and (4) a timeline with critical path activities that would enable the licensee to achieve full compliance by February 17, 2011. The timeline provides dates indicating when construction will begin on various phases of the project and when critical equipment will be ordered, installed, tested and become operational.

Notwithstanding the scheduler 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 February 17, 2011, IP1, IP2, and IP3 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 justified its request for an extension of the compliance date with regard to four specific requirements of 10 CFR 73.55 until February 17, 2011.

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 are complete, justifies extending the full compliance date in the case of this particular licensee. The security measures IP1, IP2, and IP3 need 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 to the March 31, 2010, deadline for the four items specified in the licensee's letter dated January 28, 2010, as supplemented by letter dated March 8, 2010, the licensee is required to be in full compliance by February 17, 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 14639; 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

/RA/

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