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

March 16, 2010

Site Vice President
Entergy Nuclear Operations, Inc.
Vermont Yankee Nuclear Power Station
P.O. Box 250
Governor Hunt Road
Vernon, VT 05354

SUBJECT: VERMONT YANKEE NUCLEAR POWER STATION - EXEMPTION FROM THE REQUIREMENTS OF 10 CFR PART 73, SECTION 73.55 IMPLEMENTATION DEADLINE FOR PHYSICAL SECURITY PLANS (TAC NO. ME3112)

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 Vermont Yankee Nuclear Power Station (VY or the licensee). This action is in response to your application dated January 21, 2010, as supplemented by letter dated February 17, 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 VY, 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 September 20, 2010.

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

Sincerely,

James Kim

James Kim, Project Manager
Plant Licensing Branch I-1
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket No. 50-271

Enclosure:
Exemption

cc w/encl: Distribution via Listserv

7590-01-P

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

ENTERGY NUCLEAR OPERATIONS, INC.

VERMONT YANKEE NUCLEAR POWER STATION

DOCKET NO. 50-271

EXEMPTION

1.0 BACKGROUND

Entergy Nuclear Operations, Inc. (Entergy or the licensee) is the holder of Facility Operating License No. DPR-28, which authorizes operation of the Vermont Yankee Nuclear Power Station (VY). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

The facility consists of a boiling-water reactor located in Windham County, Vermont.

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 VY 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 letter dated February 17, 2010, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's letter dated January 21, 2010, contains security sensitive information and, accordingly, is not available to the public. 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 activities to meet the new requirements contained in 10 CFR 73.55 will require additional time beyond March 31, 2010. Specifically, the request to extend the compliance date is for five specific requirements from the current March 31, 2010, deadline to September 20, 2010. Being granted this exemption for the five 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 from March 31, 2010, until September 20, 2010, with the new rule in five specified areas. 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. 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.

Vermont Yankee Schedule Exemption Request

The licensee provided detailed information in a letter dated January 21, 2010, requesting an exemption, as supplemented by letter dated February 17, 2010. The exemption request

describes a comprehensive plan to implement certain new security measures including 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. Attachment 1 of the letter dated January 21, 2010, contains (1) proprietary 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 would enable the licensee to achieve full compliance by September 20, 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 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 September 20, 2010, VY would 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 submittals and concludes that the licensee has justified its request for an extension of the compliance date with regard to five specified requirements of 10 CFR 73.55 to September 20, 2010.

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 VY 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 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, deadline for the five items specified in the licensee's letter dated January 21, 2010, as supplemented by letter dated February 17, 2010, the licensee is required to be in full compliance by September 20, 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 12311; dated March 15, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 16th day of March 2010.

FOR THE NUCLEAR REGULATORY COMMISSION

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

March 16, 2010

Site Vice President
Entergy Nuclear Operations, Inc.
Vermont Yankee Nuclear Power Station
P.O. Box 250
Governor Hunt Road
Vernon, VT 05354

SUBJECT: VERMONT YANKEE NUCLEAR POWER STATION - EXEMPTION FROM THE REQUIREMENTS OF 10 CFR PART 73, SECTION 73.55 IMPLEMENTATION DEADLINE FOR PHYSICAL SECURITY PLANS (TAC NO. ME3112)

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 Vermont Yankee Nuclear Power Station (VY or the licensee). This action is in response to your application dated January 21, 2010, as supplemented by letter dated February 17, 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 VY, 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 September 20, 2010.

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

Sincerely,

/RA/

James Kim, Project Manager
Plant Licensing Branch I-1
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket No. 50-271

Enclosure:
Exemption

cc w/encl: Distribution via Listserv

DISTRIBUTION:
PUBLIC LPL1-1 R/F RidsNrrDorlLpl-1 RidsOGCMailCenter RidsNsirDspRsrlb
RidsAcrsAcnwMailCenter RidsNrrPMVermontYankee (paper copy) RidsNrrDlrRerb DJackson, RI
RidsNrrLASLittle (paper copy) RidsRgn1MailCenter RidsOgcRp Resource LTrocine, OEDO Region 1

ADAMS Accession No.: ML100600692

OFFICE	LPL1-1/PM	LPL1-1/LA	NSIR/DSP/RSRLB/BC	NSIR/DSP/DD	OGC
NAME	JKim	SLittle	DHuyck	SMorris	LSubin
DATE	3/08/10	3/08/10	3/09/10	3/09/10	3/11/10

OFFICE	LPL1-1/BC	DORL/D		
NAME	NSalgado	JGiitter		
DATE	3/16/10	3/16/10		

OFFICIAL RECORD COPY