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

March 26, 2010

Mr. David A. Heacock
President and Chief Nuclear Officer
Virginia Electric and Power Company
Innsbrook Technical Center
5000 Dominion Boulevard
Glen Allen, VA 23060-6711

SUBJECT: SURRY POWER STATION, UNIT NOS. 1 AND 2, EXEMPTION FROM A CERTAIN REQUIREMENT OF 10 CFR PART 73 (TAC NOS. ME2879 AND ME2880)

Dear Mr. Heacock:

The Commission has approved the enclosed exemption from certain requirements of Title 10 of the *Code of Federal Regulations* (10 CFR), Part 73, for Surry Power Station, Unit Nos. 1 and 2. This action is in response to your application dated December 7, 2009, that requested an extension of the implementation deadline from March 31, 2010, to August 31, 2010, and August 31, 2011, for Units 1 and 2, respectively, for certain requirements in 10 CFR Part 73.

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

Sincerely,

Karen Cotton

Karen Cotton, Project Manager
Plant Licensing Branch II-1
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket Nos. 50-280 and 50-281

Enclosure:
Exemption

cc w/encl: Distribution via Listserv

7590-01-P

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

VIRGINIA ELECTRIC AND POWER COMPANY

SURRY POWER STATION, UNIT NOS. 1 AND 2

DOCKET NOS. 50-280 AND 50-281

EXEMPTION

1.0 BACKGROUND

The Virginia Electric and Power Company, (the licensee) is the holder of Facility Operating License Nos. DPR-32 and DPR-37, which authorize operation of the Surry Power Station, Unit Nos. 1 and 2 (Surry). 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 Surry, 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 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 certain new requirements that Surry now seeks an exemption from the March 31, 2010, implementation date. All other physical scrutiny requirements established by this recent rulemaking have already or will be implemented by the licensee by March 31, 2010.

By letter dated December 7, 2009, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." Certain portions of the licensee's December 7, 2009, letter contain 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 upgrades to portions of the Surry security system before all of the Section 73.55 requirements can be met. Specifically, the request is to extend the compliance date for certain requirements from the current March 31, 2010, deadline to August 31, 2010, and August 31, 2011, for Units 1 and 2, respectively. Being granted this exemption for this item would allow the licensee to complete the modifications designed to update 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.

NRC approval of this exemption, as noted above, would allow an extension from March 31, 2010, until August 31, 2010, and August 31, 2011, for Units 1 and 2, respectively, for the implementation date for certain requirements of the new rule. 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 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 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 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.

Surry Schedule Exemption Request

The licensee provided detailed information in its December 7, 2009, letter requesting an exemption. It describes a comprehensive plan for implementing certain requirements in the

new Part 73 rule and provides a timeline for achieving full compliance with the new regulation. The December 7, 2009, submittal contains safeguards information regarding the site security plan, details of specific portions 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, and a timeline with critical path activities that would allow the licensee to achieve full compliance by August 31, 2010, and August 31, 2011, for Units 1 and 2, respectively. The timeline provides dates indicating when (1) construction will begin on various phases of the project, (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 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, and August 31, 2011, for Units 1 and 2, respectively, Surry 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 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, and August 31, 2011, for Units 1 and 2, respectively, with regard to certain 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 long-term benefits that will be realized when the security system upgrades are complete justifies exceeding the full compliance date in the case of this particular licensee. The

security measures Surry 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 December 7, 2009, letter, the licensee is required to be in full compliance with 10 CFR 73.55 by August 31, 2010, and August 31, 2011, for Units 1 and 2, respectively. 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 9618) published March 3, 2010, as corrected in the *Federal Register* on March 19, 2010 (75 FR 13318) by letter dated March 12, 2010 (Agencywide Documents Access and Management System Accession No. ML100600405).

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

Mr. David A. Heacock
President and Chief Nuclear Officer
Virginia Electric and Power Company
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Sincerely,

/RA/

Karen Cotton, Project Manager
Plant Licensing Branch II-1
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