

August 2, 2010

Mr. James M. Lash
President & Chief Nuclear Officer
FirstEnergy Corporation
76 South Main Street
Akron, OH 44308

SUBJECT: THREE MILE ISLAND UNIT 2 - REVISED POWER REACTOR SECURITY
RULE

Dear Mr. Lash:

This letter is being sent as a follow on to the July 20, 2010 webinar on the applicability of the power reactor security regulations to Part 50 licensees. The purpose of this letter is to provide clarification on this issue and notify licensees of additional actions that may be required. The revised Power Reactor Security Rule (74 *Federal Register* (FR) 13926) became effective on May 26, 2009, with compliance required by March 31, 2010. The requirements in 10 CFR 73.55 are referenced in the protection requirements (10 CFR 72.212(b)(5)) for the general license issued under 10 CFR 72.210. The U.S. Nuclear Regulatory Commission (NRC) recognizes that some Part 50 licensees (e.g., a Part 50 licensee with a facility undergoing decommissioning or a Part 50 licensee that has only a general licensed Independent Spent Fuel Storage Installation (ISFSI) under 10 CFR 72.210 with no plant or a plant in decommissioned status) may not have recognized the applicability of the revised Power Reactor Security Rule to their facility. As a result, Part 50 licensees with facilities in decommissioning or decommissioned status may be out of compliance with the current 10 CFR 73.55 security requirements.

The NRC believes that there are currently no security or health and safety gaps at these facilities that may not be in compliance with the current 10 CFR 73.55 requirements. This is because the security programs at these facilities meet the baseline requirements of the previous version of 10 CFR 73.55 and also meet the requirements in subsequent security orders.

For facilities which may not be in compliance with the current 10 CFR 73.55, the NRC will consider, as appropriate on a case-by-case basis, the use of enforcement discretion in accordance with Section VII.B.6 of the Enforcement Policy, "Violations Involving Special Circumstances" for a period of time until the exemption process is completed. The NRC will consider a licensee's demonstration of good-faith attempt to interpret and implement the new rule, the licensee's prompt corrective actions, and the NRC's recognition of ambiguity regarding the scope of the rule when applying this discretion. Potential findings that are apparent violations of orders or applicable regulations and not attributable to good-faith interpretation and implementation problems, potential noncompliances that involve willfulness or deliberately uncorrected deficiencies, or potential noncompliances that either were not attributable to good-faith interpretation and implementation problems or involved willfulness will be dispositioned through the normal enforcement processes.

Licensees need to evaluate the applicability of the current 10 CFR 73.55 to their specific facility and either make appropriate changes to the Physical Security Plan or ISFSI physical protection system or apply for exemptions, as necessary. As a matter of clarity, the new 10 CFR 73.55 rule does not obviate licensees from implementing the Additional Security Measures (ASMs) of 2007. Therefore, the requirements in the ASMs remain in effect. Exemptions granted to requirements in the previous version of 10 CFR 73.55 automatically transfer provided the language in 10 CFR 73.55 has not changed substantively. Consistent with past practice, NRC will consider allowing a licensee in a decommissioning status or a Part 50 licensee that has only a general licensed ISFSI under 10 CFR 72.210 with no plant or a plant in decommissioned status to decrease their security requirements through the exemption process.

The NRC expects that licensees will comply with the requirements in 10 CFR 73.55 or request exemptions from those requirements in 10 CFR 73.55 that the licensee believes are not applicable to their facility. Exemptions requests, and if applicable, license amendment requests should provide the basis for the request. Any necessary responses, exemption requests, or amendments must be submitted 120 days after receipt of this letter. The staff recognizes that Three Mile Island Unit 2 is co-located with Three Mile Island Unit 1, and that the site security plan may have addressed the revised power reactor security rule for Three Mile Island Unit 2. Therefore no actions may be needed on your part at this time. Please contact John B. Hickman at 301-415-3017 or John.Hickman@nrc.gov with questions.

Sincerely,

/RA/

Bruce A. Watson, Chief
Reactor Decommissioning Branch
Decommissioning and Uranium Recovery
Licensing Directorate
Division of Waste Management
and Environmental Protection
Office of Federal and State Materials
and Environmental Management Programs

Docket No.: 50-320

cc: Three Mile Island - Unit 2 Service List

Licensees need to evaluate the applicability of the current 10.CFR 73.55 to their specific facility and either make appropriate changes to the Physical Security Plan or ISFSI physical protection system or apply for exemptions, as necessary. As a matter of clarity, the new 10 CFR 73.55 rule does not obviate licensees from implementing the Additional Security Measures (ASMs) of 2007. Therefore, the requirements in the ASMs remain in effect. Exemptions granted to requirements in the previous version of 10 CFR 73.55 automatically transfer provided the language in 10 CFR 73.55 has not changed substantively. Consistent with past practice, NRC will consider allowing a licensee in a decommissioning status or a Part 50 licensee that has only a general licensed ISFSI under 10 CFR 72.210 with no plant or a plant in decommissioned status to decrease their security requirements through the exemption process.

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Bruce A. Watson, Chief
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and Environmental Protection
Office of Federal and State Materials
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P Bamford, NRR

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OFC	RDB/PM	RDB/LA	RDB/PM	RDB/BC
NAME	JHickman	CHolston	KBanovac	BWatson
DATE	7/28/2010	7 / 28 / 2010	7 / 28 / 2010	8/2/2010

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Three Mile Island - Unit 2 Service List

cc:

Mr. James H. Lash
President & Chief Nuclear Officer
FirstEnergy Corporation
76 South Main Street
Akron, OH 44308

Mr. Eric Epstein
EFMR Monitoring Group
4100 Hillsdale Road
Harrisburg, PA 17112

Mr. Wythe Kever
The Patriot
812 Market Street
Harrisburg, PA 17105

U.S. Environmental Protection Agency
Region III Office
ATTN: Mr. B. Hoffman
EIS Coordinator
3ES30
1650 Arch Street
Philadelphia, PA 17103

Ms. Jane Lee
183 Valley Road
Etters, PA 17319

Mr. Walter W. Cohen, Consumer Advocate
Department of Justice
Strawberry Square, 14th Floor
Harrisburg, PA 17127

Mr. Mark E. Ford
Manager PDMS
Exelon Generation Company LLC
P.O. Box 480
Middletown, PA 17057

Mr. Jerome Boyd
PDMS Supervisor
Exelon Generation Company LLC
P.O. Box 480
Middletown, PA 17057

Mr. Bill Noll
Site Vice President, TMI-1
Exelon Generation Company LLC
P.O. Box 480
Middletown, PA 17057

Mr. David W. Jenkins, Esq.
First Energy Legal Department
76 South Main St.
Akron, OH 44308

Chairperson
Dauphin County Board of Commissioners
Dauphin County Courthouse
Front and Market Streets
Harrisburg, PA 17120

Mr. Ad Crable
Lancaster New Era
8 West King Street
Lancaster, PA 17601

Director
Bureau of Radiation Protection
Department of Environmental Protection
13th Floor, Rachel Carson State Office Bldg.
P. O. Box 8469
Harrisburg, PA 17105-8469

Senior Resident Inspector (TMI-1)
U.S. Nuclear Regulatory Commission
P.O. Box 311
Middletown, PA 17057

Dr. Judith H. Johnsrud
Environmental Coalition on Nuclear Power
433 Orlando Avenue
State College, PA 16803-3477

Mr. Dave Atherholt
Site Regulatory Assurance Manager, TMI-1
Exelon Generation Company LLC
P. O. Box 480
Middletown, PA 17057

Mrs. Karen Fili
Vice President GPU Nuclear Fleet
Oversight
76 South Main Street
Akron, OH 44308

Mr. Michael J. Casey
GPU Nuclear Responsible Engineer TMI-2
FirstEnergy Nuclear Operating Company
Mail Stop: A-GO-14
76 South Main Street
Akron, OH 44308