

10 CFR 50.90

RS-10-139  
August 20, 2010

U. S. Nuclear Regulatory Commission  
ATTN: Document Control Desk  
Washington, DC 20555-0001

Peach Bottom Atomic Power Station, Units 1, 2, and 3  
Facility Operating License No. DPR-12  
Renewed Facility Operating License Nos. DPR-44 and DPR-56  
NRC Docket Nos. 50-171, 50-277, and 50-278

**Subject:** Supplemental Information Concerning License Amendment to Allow Receipt and Storage of Low-Level Radioactive Waste at Peach Bottom Atomic Power Station, Units 1, 2, and 3

- References:**
- 1) Letter from D. M. Benyak (Exelon Generation Company, LLC) to U. S. NRC, "Request for License Amendment to Allow Receipt and Storage of Low-Level Radioactive Waste at Peach Bottom Atomic Power Station, Units 1, 2, and 3," dated January 6, 2010
  - 2) Letter from J. D. Hughey (U. S. NRC) to M. J. Pacilio (Exelon Generation Company, LLC), "Peach Bottom Atomic Power Station, Units 1, 2, and 3 - Request for Additional Information Related to License Amendment Request to Allow Receipt and Storage of Low-Level Radioactive Waste Generated Off-Site (TAC Nos. ME3092 and ME3093)," dated July 15, 2010.

In Reference 1, Exelon Generation Company, LLC (EGC) submitted a request to amend Facility Operating License (FOL) No. DPR-12, and Renewed FOLs DPR-44 and DPR-56 for Peach Bottom Atomic Power Station (PBAPS), Units 1, 2, and 3, respectively. The proposed change will enable PBAPS to store Class B and Class C low-level radioactive waste (LLRW) from Limerick Generating Station, Units 1 and 2 (LGS) in the PBAPS Low Level Radioactive Waste Storage Facility (LLRWSF).

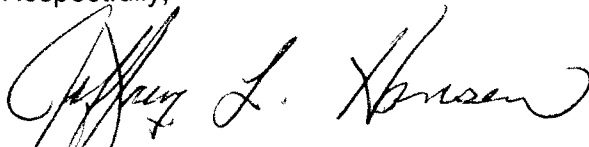
In Reference 2, the NRC forwarded request(s) for additional information (RAIs) concerning the Reference 1 license amendment request. Attachment 1 to this letter provides the information requested by the NRC. The proposed changes to the PBAPS Units 2 and 3 Renewed FOLs have been revised and are being re-submitted as Attachment 2. In addition, as described in the EGC response to NRC RAI-02 in Attachment 1, EGC is withdrawing the LAR for PBAPS Unit 1 (i.e., DPR-12).

EGC has reviewed the information supporting a finding of no significant hazards consideration, and the environmental consideration that were previously provided to the NRC in Reference 1. The additional information provided in this submittal does not affect the bases for concluding that the proposed license amendment does not involve a significant hazards consideration. In addition, the additional information provided in this submittal does not affect the bases for concluding that neither an environmental impact statement nor an environmental assessment is required for the proposed amendment. There are no regulatory commitments in this letter or the attachment.

Should you have any questions or require additional information, please contact Mr. John L. Schrage at (630) 657-2821.

I declare under penalty of perjury that the foregoing is true and correct. Executed on the 20th day of August 2010.

Respectfully,

A handwritten signature in black ink that reads "Jeffrey L. Hansen". The signature is written in a cursive style with a large, sweeping initial "J".

Jeffrey L. Hansen  
Manager - Licensing  
Exelon Generation Company, LLC

Attachments:

1. Response to Requests for Additional Information
2. Revision to Proposed Mark-up of PBAPS Units 2 and 3 Renewed Facility Operating Licenses DPR-44 and DPR-56

cc: Administrator – NRC Region I  
NRC Project Manager, NRR – Peach Bottom Atomic Power Station  
Director, Bureau of Radiation Protection - Pennsylvania Department of Environmental Resources

## Attachment 1

### Response to Requests for Additional Information Proposed Change to Facility Operating License (FOL) DPR-12 and Renewed FOLs DPR-44 and DPR-56 Peach Bottom Atomic Power Station, Units 1, 2, and 3

By letter dated January 6, 2010 (Agencywide Documents Access and Management System Accession No. ML100200009), Exelon Generation Company, LLC (EGC) submitted a request to amend Facility Operating License (FOL) No. DPR-12, and Renewed FOLs DPR-44 and DPR-56 for Peach Bottom Atomic Power Station (PBAPS), Units 1, 2, and 3, respectively. The proposed change would enable PBAPS to store Class B and Class C low-level radioactive waste (LLRW) from Limerick Generating Station, Units 1 and 2 (LGS) in the PBAPS Low Level Radioactive Waste Storage Facility (LLRWSF).

#### **NRC Request for Additional Information (RAI)**

"The NRC staff has reviewed Exelon's submittal and determined that additional information, as described below, is needed to complete the review."

#### **NRC RAI-01**

"Provide a discussion of how any off-site generated waste would be managed, tracked and differentiated from PBAPS waste, with respect to any delineation of operating costs for the PBAPS LLRW storage facility and ultimate waste disposal or decommissioning costs. Also discuss whether there would be any resulting impacts on insurance or decommissioning financial assurance for PBAPS."

#### **Exelon Generation Company, LLC Response**

Upon generation of a Class B or Class C LLRW liner at any EGC nuclear station, EGC establishes an accounting liability for the station that generated the liner, equivalent to the expected disposal cost. This accounting liability will be the responsibility of the station that generated the liner and will be accounted for as such, regardless of the location of the LLRW liner. This will ensure, upon ultimate disposal of the Class B or Class C LLRW liner that the actual disposal cost is borne by the station that generated the liner.

Similarly, the EGC financial accounting system and manual allocation processes have the ability to allocate the ongoing operational costs, including direct costs associated with receipt and eventual shipment of Class B and Class C LLRW liners, to LGS (i.e., the facility that generated the liner). EGC has implemented a similar system for allocating costs associated with the loading and on-site transport of spent fuel in dry cask storage systems, and allocating ongoing operating costs for the associated independent spent fuel storage installations.

These financial accounting and manual allocation processes will ensure that the storage of LGS Class B and Class C LLRW liners in the PBAPS LLRWSF, and the eventual disposal of these liners, will not impact the decommissioning financial assurance for PBAPS, since all of these costs will be accounted for as operating costs at the facility that generated the waste.

In addition, these financial accounting processes will ensure that the storage of Class B and Class C LLRW from LGS, within the PBAPS LLRWSF does not constitute, either implicitly or explicitly, "commercial storage," as described in NRC Generic Letter 85-14, "Commercial Storage at Power Reactor Sites of Low-Level Radioactive Waste Not Generated by the Utility." The strict allocation of costs for the handling, storage, and eventual disposal of LLRW from LGS precludes consideration of the storage option as a commercial venture.

## Attachment 1

### Response to Requests for Additional Information Proposed Change to Facility Operating License (FOL) DPR-12 and Renewed FOLs DPR-44 and DPR-56 Peach Bottom Atomic Power Station, Units 1, 2, and 3

In accordance with the Atomic Energy Act of 1954, as amended (the Act), Section 170, "Indemnification and Limitation of Liability," and 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements," EGC has established the required amount of financial protection to cover public liability claims. This includes the establishment of an indemnity agreement with the NRC (i.e., Indemnity Agreement No. B-28, Amendment No. 25), which was issued to EGC on January 12, 2001 as an enclosure to conforming Amendments 239 and 242 to PBAPS Renewed FOLs DPR-44 and DPR-56. With respect to the storage of Class B and Class C LLRW from LGS at PBAPS, Indemnity Agreement No. B-28 limits the applicability of the agreement to LLRW produced as a result of the operation of PBAPS.

However, EGC has also established additional nuclear liability policies (i.e., Facility Form and Master Worker) with American Nuclear Insurers (ANI), in accordance with the requirements of the Act and 10 CFR Part 140. The NRC confirmed this compliance in Amendments 239 and 242 to Renewed FOLs DPR-44 and DPR-56, respectively. Regulatory Finding 1.F of Renewed FOLs DPR-44 and DPR-56 states that the licensees (i.e., EGC and PSEG Nuclear LLC (PSEG)) "have satisfied the applicable provisions of 10 CFR Part 140, 'Financial Protection Requirements and Indemnity Agreements,' of the Commission's regulations."

The additional liability policies that EGC has established with ANI, which were transmitted to and referenced by the NRC in Amendments 239 and 242 to Renewed FOLs DPR-44 and DPR-56, do not impose a coverage limitation as to the source of LLRW. EGC, in consultation with ANI, has determined that these existing policies provide an acceptable level of financial protection for the proposed storage option. No objections or recommendations have been issued by ANI.

EGC is also required, by the Price-Anderson Act, to participate in the Secondary Financial Protection (SFP) program. The SFP follows the form of the underlying Facility Form and Master Worker policies (i.e., the ANI liability policies), and therefore would not be limited based on the origin of the LLRW.

EGC is also required to provide financial assurance in accordance with 10 CFR Part 50.54(w). EGC purchases nuclear property policies from Nuclear Electric Insurance Limited (NEIL). To comply with this requirement, EGC has, in consultation with NEIL, determined that these existing policies provide an acceptable level of financial protection for the proposed storage option. No objections or recommendations have been issued by NEIL.

#### **NRC RAI-02**

"Provide a discussion of the licensing basis and use of the LLRW storage facility with respect to PBAPS Unit 1. The original 10 CFR 50.59 evaluation regarding the LLRW storage facility, and referenced in the amendment request, does not address Unit 1. Furthermore, the PBAPS LLRW storage facility is not described in the Unit 1 Updated Final Safety Analysis Report. "

## Attachment 1

### Response to Requests for Additional Information Proposed Change to Facility Operating License (FOL) DPR-12 and Renewed FOLs DPR-44 and DPR-56 Peach Bottom Atomic Power Station, Units 1, 2, and 3

#### **EGC Response**

Based upon additional EGC review of the initial August 1983 10 CFR 50.59 evaluation in support of the PBAPS LLRWSF, as well as the PBAPS Unit 1 UFSAR, EGC has determined that the proposed storage of LGS LLRW in the PBAPS LLRWSF is not impacted or affected by, nor does it impact or affect PBAPS Unit 1.

Sections I.A, "Purpose," and I.B, "Background and Need," of the August 1983 10 CFR 50.59 evaluation specifically limit the applicability of the evaluation, and thus the LLRWSF, to PBAPS Units 2 and 3. This applicability is reiterated in Section II.2, "Amounts/Types of Low-Level Waste Material to be Stored and Design Source Terms," which states that the facility is designed to store LLRW generated by PBAPS Units 2 and 3.

The PBAPS Unit 1 UFSAR describes the plan for decommissioning the unit. Section 1, "Introduction," establishes that PBAPS Unit 1 will be completely enclosed by a locked fence, which is the "Exclusion Area." Section 2, "Decommissioning Summary," states that residual activity contained within the Exclusion Area will be licensed under a Part 50 Possession Only license. Section 3.1 "Disposition of Special Nuclear Material," and Section 3.2, "Disposition of By-Product Material," states that all Special Nuclear Material and by-product material, with the exception of that contained within the primary system, within the annulus of the fuel pool, and low level residual surface contamination, has been removed from PBAPS Unit 1 and shipped offsite. Therefore, there is no source of LLRW in PBAPS Unit 1 that could be stored within the LLRWSF. In addition, the physical controls associated with PBAPS Unit 1 (i.e., a locked Exclusion Area fence, and a separately locked Containment and Fuel Building) would prevent the inadvertent and/or uncontrolled removal of radioactive material from PBAPS Unit 1.

Therefore, EGC agrees that the PBAPS LLRWSF, including the storage of LGS Class B and Class C LLRW liners within the LLRWSF, is not impacted by, nor does it impact PBAPS Unit 1. As such, EGC hereby withdraws this license amendment request (LAR) for DPR-12.

EGC has reviewed the information supporting a finding of no significant hazards consideration and the environmental consideration that were previously provided to the NRC in the January 6, 2010 license amendment request. The additional information provided in this submittal, including the withdrawal of the LAR for FOL DPR-12, does not affect the bases for concluding that the proposed license amendment does not involve a significant hazards consideration. The additional information provided in this submittal does not affect the bases for concluding that neither an environmental impact statement nor an environmental assessment is required for the proposed amendment.

## Attachment 1

### Response to Requests for Additional Information Proposed Change to Facility Operating License (FOL) DPR-12 and Renewed FOLs DPR-44 and DPR-56 Peach Bottom Atomic Power Station, Units 1, 2, and 3

#### **RAI-03**

"Provide a discussion of the legal and licensing issues related to the fact that PBAPS, Units 2 and 3 are jointly owned by PSEG Nuclear, LLC, (PSEG). As part owner of PBAPS, PSEG would be financially participating in the storage of LLRW from a facility (LGS) in which PSEG has no legal ownership."

#### **EGC Response**

As stated in the response to RAI-01 above, EGC establishes an accounting liability for each LLRW liner generated at any of the EGC stations, equivalent to the expected disposal cost. This accounting liability will remain the responsibility of the station that generated the liner, and will be accounted for as such, regardless of the location of the LLRW liner. This will ensure, upon ultimate disposal of the Class B or Class C LLRW liner the actual disposal cost is allocated to the station that generated the liner. This ensures that, upon eventual disposal of the liner, PSEG, will not incur any disposal costs.

Similarly, the EGC financial accounting system and manual allocation processes have the ability to allocate the ongoing operational costs, including direct costs associated with receipt and eventual shipment of Class B and Class C LLRW liners, to LGS (i.e., the facility that generated the liner). EGC has implemented a similar system for allocating costs associated with the loading and transport of spent fuel in dry cask storage systems and allocating ongoing operational costs for the associated independent spent fuel storage installations. This cost allocation system for LLRW liners will ensure that PSEG will not incur any operational costs associated with the storage of LGS LLRW in the PBAPS LLRWSF.

#### **RAI-04**

"Provide a discussion of any legal authority enjoyed by the Commonwealth of Pennsylvania, as an Agreement State, with regard to the proposed transportation to and storage of LGS LLRW at PBAPS."

#### **EGC Response**

In accordance with Section 174, of the Act, "Cooperation With States," subsection b, the NRC executed an agreement with the Commonwealth of Pennsylvania, dated March 26, 2008, providing for the discontinuance by the Commission and assumption by the Commonwealth of Pennsylvania certain Commission regulatory authority, thus establishing the Commonwealth of Pennsylvania as an Agreement State.

Section 274, subsection c. of the Act states that "no agreement entered into pursuant to subsection b. of the Act shall provide for the discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of any production or utilization facility." This separation of regulatory authority is acknowledged in Article II of the March 26, 2008 agreement, as well as the Pennsylvania Radiation Protection Act (35 P.S. 7110), and Title 25 of the Pennsylvania Code, Chapter 215, (25 PC Chapter 215), "General Provisions."

Specifically, the Radiation Protection Act, Section 301, "Powers and Duties of Department of Environmental Resources," (DER), subsection (c), "Powers and duties," item (15), states that the issuance of registrations and licenses "is not intended to require registration and licenses of facilities and activities within the exclusive jurisdiction of the Nuclear Regulatory Commission." Correspondingly,

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25 PC Chapter 215 affirms this limitation of legal authority by stating that this part of the Pennsylvania Code "does not apply to the extent the person is subject to regulation by the NRC." Thus, the legal authority granted to the Commonwealth of Pennsylvania by the NRC does not extend to the storage of LLRW at any nuclear power plant in the state.

Title 25 of the Pennsylvania Code, Chapter 230 (25 PC Chapter 230), "Packaging and Transportation of Radioactive Material," establishes requirements for the packaging, preparation for shipment, and the transportation of radioactive material. This regulation requires that licensees transporting radioactive material comply with the applicable requirements in 10 CFR Part 71, as excepted, and 49 CFR Parts 171 through 180. Although LGS and PBAPS are not licensed by the Commonwealth of Pennsylvania, the 10 CFR Part 50 licenses for each station also require compliance with these regulations for transportation and receipt of radioactive material.

#### **RAI-05**

"Provide a technical justification for the storage of Class A LLRW from LGS at PBAPS. The amendment request states that Class A LLRW from LGS will continue to be stored at the Energy Solutions Complex in Clive, Utah, on page one of the LAR letter and that Class A LLRW will be stored at PBAPS, if needed, in Section 1.1 of Attachment 1. The proposed license change would allow storage of LGS Class A, as well as Class B and C, LLRW at PBAPS. However, only evaluation and analysis of Class B/C storage at PBAPS is included in the LAR."

#### **EGC Response**

In the cover letter and Attachment 1 of the January 6, 2010 LAR, EGC stated:

*"Specifically, the revised license paragraph would enable EGC to store LLRW generated at LGS in the PBAPS LLRWSF. The PBAPS LLRWSF already provides storage for LLRW generated at PBAPS."*

The intent of this statement, as well as the LAR, was to receive and store Class B and Class C LLRW from LGS within the PBAPS LLRWSF. EGC does not intend to, nor does the LAR request permission to store Class A LLRW from LGS within the PBAPS LLRWSF.

Attachment 1 of the January 6, 2010 LAR also stated:

*"Due to the inability to ship Class B/C LLRW to an external disposal facility, the PBAPS LLRWSF will be used to store primarily Class B/C LLRW, as well as Class A LLRW, if needed."*

The intent of this statement was to describe the immediate impact on PBAPS of the closure of the EnergySolutions, LLC LLRW disposal facility in Barnwell, South Carolina (EnergySolutions - Barnwell). That is, due to the closure of EnergySolutions – Barnwell, EGC would use the PBAPS LLRWSF to store Class B and Class C LLRW generated at PBAPS and, if needed, EGC would use the PBAPS LLRWSF to store Class A LLRW that was generated at PBAPS. As stated above, EGC does not intend to, nor does the LAR request permission to store Class A LLRW from LGS within the PBAPS LLRWSF.

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### Response to Requests for Additional Information Proposed Change to Facility Operating License (FOL) DPR-12 and Renewed FOLs DPR-44 and DPR-56 Peach Bottom Atomic Power Station, Units 1, 2, and 3

Nevertheless, EGC agrees that the proposed change to the PBAPS Units 2 and 3 Renewed FOLs would not prevent EGC from storing Class A LLRW generated at LGS within the PBAPS LLRWSF. As such, Attachment 2 provides a revision to the proposed FOL change that will limit the applicability of the revised FOL to storage of Class B and Class C LLRW from LGS within the PBAPS LLRWSF.

#### **RAI-06**

"Provide a revised No Significant Hazards Consideration (NSHC) determination that addresses storage of Class A LLRW from LGS. The NSHC provided with the LAR does not address the potential for storage of Class A LLRW from LGS at PBAPS."

#### **EGC Response**

As stated in the response to NRC RAI-05 above, the intent of the January 6, 2010 LAR was to enable PBAPS to receive and store Class B and Class C LLRW from LGS within the PBAPS LLRWSF. EGC does not intend to, nor does the LAR request permission to store Class A LLRW from LGS within the PBAPS LLRWSF.

EGC agrees that the proposed change to the PBAPS Units 2 and 3 Renewed FOLs would not prevent EGC from storing Class A LLRW generated at LGS within the PBAPS LLRWSF. As such, Attachment 2 provides a revision to the proposed FOL change that will limit the applicability of the revised PBAPS Units 2 and 3 FOLs to storage of Class B and Class C LLRW from LGS within the PBAPS LLRWSF.

EGC has reviewed the information supporting a finding of no significant hazards consideration and the environmental consideration that were previously provided to the NRC the January 6, 2010 LAR. The additional information provided in this submittal, including the revision to the proposed FOL change, does not affect the bases for concluding that the proposed license amendment does not involve a significant hazards consideration. In addition, the additional information provided in this submittal does not affect the bases for concluding that neither an environmental impact statement nor an environmental assessment is required for the proposed amendment.



Attachment 2

Revision to Proposed Mark-up of PBAPS Units 2 and 3  
Renewed Facility Operating Licenses DPR-44 and DPR-56

Facility Operating License No. DPR-44  
Page 3

Facility Operating License No. DPR-56  
Page 3

- (5) Exelon Generation Company, pursuant to the Act and 10 CFR Parts 30 and 70, to possess, but not to separate, such byproduct and special nuclear material as may be produced by operation of the facility.

C. This renewed license shall be deemed to contain and is subject to the conditions specified in the following Commission regulations in 10 CFR Chapter I: Part 20, Section 30.34 of Part 30, Section 40.41 of Part 40, Section 50.54 of Part 50, and Section 70.32 of Part 70; all applicable provisions of the Act and the rules, regulations, and orders of the Commission now or hereafter in effect; and is subject to the additional conditions specified below:

(1) Maximum Power Level

Exelon Generation Company is authorized to operate the Peach Bottom Atomic Power Station, Unit 2, at steady state reactor core power levels not in excess of 3514 megawatts thermal.

, and such Class B and Class C low-level radioactive waste as may be produced by the operation of Limerick Generating Station, Units 1 and 2.

(2) Technical Specifications

The Technical Specifications contained in Appendices A and B, as revised through Amendment No. 273, are hereby incorporated in the license. Exelon Generation Company shall operate the facility in accordance with the Technical Specifications.

(3) Physical Protection

Exelon Generation Company shall fully implement and maintain in effect all provisions of the Commission-approved physical security, training and qualification, and safeguards contingency plans, including amendments made pursuant to provisions of the Miscellaneous Amendments and Search Requirements revisions to 10 CFR 73.55 (51 FR 27817 and 27822) and the authority of 10 CFR 50.90 and 10 CFR 50.54(p). The combined set of plans<sup>1</sup>, submitted by letter dated May 17, 2006, is entitled: "Peach Bottom Atomic Power Station Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Independent Spent Fuel Storage Installation Security Program, Revision 3." The set contains Safeguards Information protected under 10 CFR 73.21.

(4) Fire Protection

The Exelon Generation Company shall implement and maintain in effect all provisions of the approved fire protection program as described in the Updated Final Safety Analysis Report for the facility, and as approved in the NRC Safety Evaluation Report (SER) dated May 23, 1979, and Supplements dated August 14, September 15, October 10 and November 24, 1980, and in the NRC SERs dated September 16, 1993, and August 24, 1994, subject to the following provision:

The Exelon Generation Company may make changes to the approved

<sup>1</sup> The Training and Qualification Plan and Safeguards Contingency Plan are Appendices to the Security Plan.

- (5) Exelon Generation Company, pursuant to the Act and 10 CFR Parts 30 and 70, to possess, but not to separate, such byproduct and special nuclear material as may be produced by operation of the facility.

C. This renewed license shall be deemed to contain and is subject to the conditions specified in the following Commission regulations in 10 CFR Chapter I: Part 20, Section 30.34 of Part 30, Section 40.41 of Part 40, Section 50.54 of Part 50, and Section 70.32 of Part 70; all applicable provisions of the Act and the rules, regulations, and orders of the Commission now or hereafter in effect; and is subject to the additional conditions specified below:

(1) Maximum Power Level

, and such Class B and Class C low-level radioactive waste as may be produced by the operation of Limerick Generating Station, Units 1 and 2.

Exelon Generation Company is authorized to operate the Peach Bottom Atomic Power Station, Unit No. 3, at steady state reactor core power levels not in excess of 3514 megawatts thermal.

(2) Technical Specifications

The Technical Specifications contained in Appendices A and B, as revised through Amendment No. 277, are hereby incorporated in the license. Exelon Generation Company shall operate the facility in accordance with the Technical Specifications.<sup>1</sup>

(3) Physical Protection

Exelon Generation Company shall fully implement and maintain in effect all provisions of the Commission-approved physical security, training and qualification, and safeguards contingency plans, including amendments made pursuant to provisions of the Miscellaneous Amendments and Search Requirements revisions to 10 CFR 73.55 (51 FR 27817 and 27822) and the authority of 10 CFR 50.90 and 10 CFR 50.54(p). The combined set of plans<sup>2</sup>, submitted by letter dated May 17, 2006, is entitled: "Peach Bottom Atomic Power Station Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Independent Spent Fuel Storage Installation Security Program, Revision 3." The set contains Safeguards Information protected under 10 CFR 73.21.

(4) Fire Protection

The Exelon Generation Company shall implement and maintain in effect all provisions of the approved fire protection program as described in the Updated Final Safety Analysis Report for the facility, and as approved in

<sup>1</sup>Licensed power level was revised by Amendment No. 250, dated November 22, 2002, and will be implemented following the 14<sup>th</sup> refueling outage currently scheduled for Fall 2003.

<sup>2</sup>The training and Qualification Plan and Safeguards Contingency Plan are Appendices to the Security Plan.

Renewed License No. DPR-56  
Revised by letter dated October 28, 2004  
Revised by letter dated November 5, 2004  
Revised by letter dated May 29, 2007  
Amendment No. 277