



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

December 1, 2010

Mr. Mark Ajluni
Manager, Nuclear Licensing
Southern Nuclear Operating Company Inc.
40 Inverness Parkway
P.O. Box 1295
Birmingham, AL 35201

SUBJECT: JOSEPH M. FARLEY NUCLEAR PLANT, UNITS 1 AND 2, EXEMPTION FROM CERTAIN REQUIREMENTS OF 10 CFR PART 73 (TAC NOS. ME4703 AND ME4704)

Dear Mr. Ajluni:

The U.S. Nuclear Regulatory Commission has approved the enclosed exemption from certain requirements of Title 10 of the *Code of Federal Regulations* (10 CFR), Part 73, for the Joseph M. Farley Nuclear Plant, Units 1 and 2. This action is in response to your application consisting of two letters dated September 10, 2010, as supplemented by letter dated October 5, 2010, that requested an extension of the implementation deadline from March 31, 2010, to July 15, 2011, for certain measures 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,

A handwritten signature in cursive script that reads "Robert E. Martin".

Robert E. Martin, Senior Project Manager
Plant Licensing Branch II-1
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket Nos. 50-348 and 50-364

Enclosure:
Exemption

cc w/encl: Distribution via Listserv

NUCLEAR REGULATORY COMMISSION
SOUTHERN NUCLEAR OPERATING COMPANY, INC.
JOSEPH M. FARLEY NUCLEAR PLANT, UNITS 1 AND 2

DOCKET NOS. 50-348 AND 50-364

[NRC-2010-xxxx]

EXEMPTION

1.0 BACKGROUND

Southern Nuclear Operating Company, Inc. (SNC, the licensee), is the holder of Renewed Facility Operating License Nos. NPF-2 and NPF-8, which authorizes operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2 (FNP). 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 Houston County, Alabama.

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 includes additional requirements to further enhance site security based upon insights gained from implementation of the post September 11, 2001, security orders. It is from three of these new requirements that, by its letters dated September 10 and October 5, 2010, SNC now seeks an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have already been implemented by the licensee by March 31, 2010.

Previously, by letters dated June 9, and July 31, 2009, SNC submitted a request for an exemption from the compliance date identified in 10 CFR 73.55 for the three requirements of 10 CFR 73.55 that are discussed above. The NRC staff reviewed the request and by letter dated August 27, 2009, granted an exemption to the March 31, 2010, compliance date for the specific requirements identified within the SNC exemption request until December 15, 2010, to afford additional time for the necessary security system upgrades.

Subsequently, by letters dated September 10 and October 5, 2010, the licensee submitted an additional request for an exemption to the compliance date identified in 10 CFR 73.55, in accordance with 10 CFR 73.5, "Specific exemptions." The new compliance date requested for the specific requirements identified within this exemption request is July 15, 2011.

The licensee's letters dated September 10, 2010 (NL-10-1676) and October 5, 2010 (NL-10-1908) contain security-related information and, accordingly, are not available to the public. A redacted version of the licensee's September 10, 2010, letter (NL-10-1795) is available at ADAMS Accession No. ML102560042. The licensee has requested a further exemption from the March 31, 2010, compliance date stating that a number of issues, including unforeseen growth in the amount of design work required, design product loss due to computer hardware failures, and weather-related construction delays, will present a significant challenge

to timely completion of the project related to a specific requirement in 10 CFR Part 73.

Specifically, the request is to extend the compliance date for three specific requirements from the current March 31, 2010, deadline to July 15, 2011. Being granted this exemption for these items will 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.

An NRC approval of this exemption would; as noted above, allow an extension from March 31, 2010, to July 15, 2011, for the implementation date for three specific requirements of the new rule. The NRC staff has determined that granting of the licensee's proposed exemption will 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 rule provided to the Commission (SECY-08-0099 dated July 9, 2008), 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 as discussed in the June 4, 2009, letter.

FNP Schedule Exemption Request

The licensee provided detailed information in its letters dated September 10 and October 5, 2010, requesting an exemption. It describes a comprehensive plan to install equipment related to the requirements in the new Part 73 rule and provides a timeline for achieving full compliance with the new regulation. The submittals contain security-related information regarding the site security plan, details of the specific requirements 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 will bring the licensee into full compliance by July 15, 2011. The timeline provides dates indicating (1) when various phases of the project begin and end (i.e., design, field construction), (2) outages scheduled for each unit, and (3) when critical equipment will be ordered, installed, tested and become operational.

Notwithstanding, the schedular exemption for these limited requirements, the licensee is required 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 July 15, 2011, SNC will be in full compliance with all the regulatory requirements of 10 CFR 73.55 for the FNP, 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 provided adequate justification for its request for an extension of the compliance date to July 15, 2011, with regard to three specific 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 NRC staff has determined that the long-term benefits that will be realized when the FNP equipment installation is complete justifies extending the full compliance date with regard to the specific requirements of 10 CFR 73.55. The security measures, that SNC needs additional time to implement, are new requirements imposed by the March 27, 2009, amendments to 10 CFR 73.55, and is 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 requirement specified in the SNC letters dated September 10 and October 5, 2010, the licensee is required to be in full

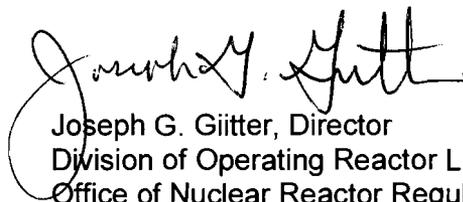
compliance by July 15, 2011. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (i.e., 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

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 73135, dated November 29, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 1st day of December 2010.

FOR THE NUCLEAR REGULATORY COMMISSION

A handwritten signature in black ink, appearing to read "Joseph G. Gitter". The signature is written in a cursive style with a large initial "J".

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

December 1, 2010

Mr. Mark Ajluni
Manager, Nuclear Licensing
Southern Nuclear Operating Company Inc.
40 Inverness Parkway
P.O. Box 1295
Birmingham, AL 35201

SUBJECT: JOSEPH M. FARLEY NUCLEAR PLANT, UNITS 1 AND 2, EXEMPTION FROM CERTAIN REQUIREMENTS OF 10 CFR PART 73 (TAC NOS. ME4703 AND ME4704)

Dear Mr. Ajluni:

The U.S. Nuclear Regulatory Commission has approved the enclosed exemption from certain requirements of Title 10 of the *Code of Federal Regulations* (10 CFR), Part 73, for the Joseph M. Farley Nuclear Plant, Units 1 and 2. This action is in response to your application consisting of two letters dated September 10, 2010, as supplemented by letter dated October 5, 2010, that requested an extension of the implementation deadline from March 31, 2010, to July 15, 2011, for certain measures 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,

/RA/

Robert E. Martin, Senior Project Manager
Plant Licensing Branch II-1
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket Nos. 50-348 and 50-364

Enclosure:
Exemption

cc w/encl: Distribution via Listserv

DISTRIBUTION:

PUBLIC
LPL2-1 R/F
RidsAcrsAcnw_MailCTR Resource
RidsNrrDorlDpr Resource
RidsNrrDorlLpl2-1 Resource
DHuyck, NSIR

RidsNrrLASRohrer Resource
RidsNrrPMFarley Resource
RidsOgcRp Resource
RidsRgn2MailCenter Resource
NSanfilippo, EDO

ADAMS Accession No. Letter: ML102980427 Exemption: ML102980437 *by memo

OFFICE	DORL/LPL2-1/PM	DORL/LPL2-1/LA	DORL/LPL2-1/BC	NSIR/RSRLB/BC
NAME	RMartin	SRohrer	GKulesa	RFelts*
DATE	11/30/10	10/25/10	11/30/10	10/22/10
OFFICE		OGC NLO w/comments	DORL/D	
NAME		MSpencer	JGitter	
DATE		11/4/10	12/1/10	

OFFICIAL RECORD COPY