

NUCLEAR REGULATORY COMMISSION

DETROIT EDISON COMPANY

FERMI 2

DOCKET NO. 50-341

EXEMPTION

[NRC-2010-0388]

1.0 BACKGROUND

Detroit Edison Company (DECo) (the licensee) is the holder of Facility Operating License No. NFP-43 which authorizes operation of the Fermi 2. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a boiling water reactor located in Monroe County in Michigan.

2.0 REQUEST/ACTION

Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50, Appendix E, Section IV.F.2.b requires that "Each licensee at each site shall conduct an exercise of its onsite emergency plan every 2 years." By letter dated August 3, 2010 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML102230442), the licensee requested a one-time exemption from this requirement that would have allowed the licensee to not conduct the onsite portion of a biennial emergency preparedness (EP) exercise in 2010. Requests for additional information (RAIs) were sent to the licensee on September 13, 2010 (ADAMS Accession No. ML102580355), and a teleconference was held with the licensee on September 17, 2010, to discuss the RAIs. By letter dated October 22, 2010 (ADAMS Accession No. ML102950490), the licensee responded to the RAIs and amended their request to include only a one-time schedular exemption to postpone the onsite portion of the biennial EP exercise

until calendar year (CY) 2011. As a result of the licensee's responses to first set of RAIs, a second set of RAIs were sent to the licensee on October 29, 2010 (ADAMS Accession No. ML103050328). A telephone call was conducted with the licensee on November 4, 2010, to discuss these additional RAIs. The licensee responded to the second set of RAIs by letter dated November 15, 2010 (ADAMS Accession No. ML103200126).

The licensee's original request for an exemption stated that a tornado swept across the Fermi 2 property on June 6, 2010, and that the resulting damage led to an Alert declaration and the activation of the licensee's Emergency Response Organization (ERO). Due to the tornado event, the licensee chose to cancel its scheduled biennial EP exercise on June 8, 2010. In the original request, the licensee asked to be given credit for their scheduled 2010 biennial EP exercise based upon the Alert declaration and subsequent response to the June 6, 2010, tornado event. In the licensee's letter in response to the first set of RAIs, the licensee states that: "Rescheduling the cancelled exercise in calendar year 2010 is not considered due to the unavailability of resources necessary to prepare for and conduct an NRC-evaluated exercise. DECo resources since the cancellation of the exercise were devoted to safely planning and preparing for the fall refueling outage." The licensee's original request stated that it did participate in a limited scope biennial EP exercise utilizing partial onsite participation and full participation by state and local response organizations on June 8, 2010. Participation by state and local response organizations was evaluated by the Federal Emergency Management Agency (FEMA) and therefore met the biennial exercise requirement for these offsite agencies.

In summary, as a result of the impact of the combined need to recover from the tornado damage and support a scheduled refueling outage, the licensee requested, in response to the staff RAIs, an exemption that would allow rescheduling the onsite portion of the exercise from CY 2010 until CY 2011.

3.0 DISCUSSION

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, Appendix E, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present.

Authorized by Law

This exemption would allow the licensee to accommodate these impacts upon its resources by postponing the onsite portion of the exercise from the previously scheduled date during CY 2010 until CY 2011.

As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50, Appendix E. 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.

No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50, Appendix E, Section IV.F.2.b requiring licensees to conduct a biennial EP exercise is to ensure that ERO personnel are familiar with their duties and to test the adequacy of emergency plans. In addition, 10 CFR 50, Appendix E, Section IV.F.2.b also requires licensees to maintain adequate emergency response capabilities during the intervals between biennial EP exercises by conducting drills to exercise the principal functional areas of emergency response. In order to accommodate the scheduling of full participation exercises, the NRC has allowed licensees to schedule the exercises at any time during the calendar biennium. Conducting the Fermi 2 full-participation exercise in CY 2011, rather than CY 2010, places the exercise outside of the required biennium. Since the last

biennial EP exercise on May 20, 2008, the licensee has conducted 20 training drills that collectively exercised the principal functional areas of emergency response, including management, coordination of emergency response, accident assessment, protective action decision making, and plant system repair and corrective actions. These drills, collectively, involved all onsite emergency response facilities and many of the drills included participation by offsite response organizations. In addition, at the request of FEMA, the licensee supported the State and local authorities with the offsite portion of the biennial EP exercise on June 8, 2010, thereby facilitating the FEMA evaluation of the State and local authorities. The NRC staff considers the intent of this requirement is met by having conducted these series of training drills.

Based on the above, no new accident precursors are created by allowing the licensee to postpone the onsite portion of the exercise from the previously scheduled date of June 8, 2010, to CY 2011. Thus, the probability and consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

Consistent with Common Defense and Security

The proposed exemption would allow rescheduling of the onsite portion of the biennial EP exercise from the previously scheduled date of June 8, 2010, to CY 2011. This change to the EP exercise schedule has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

In order to grant exemptions in accordance with 10 CFR 50.12, special circumstances must be present. Special circumstances per 10 CFR 50.12 that apply to this exemption request are 10 CFR 50.12(a)(2)(ii) and (v). Special circumstances, per 10 CFR 50.12(a)(2)(ii), are present when: "Application of the regulation in the particular circumstances would not serve the

underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.”

Section IV.F.2.b of 10 CFR Part 50, Appendix E requires licensees at each site to conduct an exercise of onsite emergency plans biennially with full-participation by each offsite authority having a role under the plan. The underlying purposes of 10 CFR 50, Appendix E, Section IV.F.2.b requiring licensees to conduct a biennial EP exercise is to ensure that ERO personnel are familiar with their duties and to test the adequacy of emergency plans. Since the licensee has conducted 20 training drills exercising the principle functional areas of emergency response since the last evaluated biennial EP exercise, has activated all onsite emergency response facilities during those drills, and has supported the FEMA evaluation of the State and local authorities, the NRC staff considers that these measures are adequate to maintain an acceptable level of emergency preparedness during this period, satisfying the underlying purpose of the rule.

Under 10 CFR 50.12(a)(2)(v), special circumstances are present whenever the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation. Due to the activation of ERO personnel as a result of the tornado two days prior to June 8, 2010 biennial exercise, the 20 training drills conducted since the last evaluated biennial EP exercise, and the licensee's support of the FEMA evaluation of the State and local authorities during the June 8, 2010 exercise, the NRC staff considers the licensee to have made good faith efforts to comply with the regulation. Also, the requested exemption to conduct the onsite EP exercise in CY 2011 instead of CY 2010 would grant only temporary relief from the applicable regulation. Since the underlying purpose of 10 CFR 50, Appendix E, Section IV.F.2.b is achieved, the licensee has made a good faith effort to comply with the regulation, and the exemption would grant only

temporary relief from the applicable regulation, the special circumstances required by 10 CFR 50.12(a)(2)(ii and v) exist for the granting of an exemption.

4.0 CONCLUSION

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, is consistent with the common defense and security, and special circumstances are present. Therefore, the Commission, hereby grants DECo an exemption from the requirements of 10 CFR Part 50, Appendix E, Section IV.F.2.b to conduct the onsite portion of the Fermi 2 biennial EP exercise required for CY 2010, permitting that part of the exercise to be conducted in coordination with NRC Region III and Fermi 2 plant schedule as soon as reasonably achievable in CY 2011.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 81316).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 27th day of December 2010.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

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