



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

May 23, 2011

Mr. Jack M. Davis  
Senior Vice President and  
Chief Nuclear Officer  
Detroit Edison Company  
Fermi 2 - 210 NOC  
6400 North Dixie Highway  
Newport, MI 48166

SUBJECT: FERMI 2 – SCHEDULER EXEMPTION FROM CERTAIN REQUIREMENTS OF  
10 CFR PART 73, SECTION 73.55 (TAC NO. ME5918)

Dear Mr. Davis:

The Nuclear Regulatory Commission (NRC) has approved the enclosed exemption from specific requirements of Title 10 of the *Code of Federal Regulations* (10 CFR), Part 73 for Fermi 2. By letter dated March 19, 2010 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML100350225), the NRC granted an exemption to extend the deadline from March 31, 2010, until May 31, 2011, for the implementation of certain measures in 10 CFR Part 73, dated March 27, 2009 (74 FR 13926). This action is in response to your application dated March 23, 2011 (ADAMS Accession No. ML111290414), which requested a further extension of the deadline for the implementation of two specific security requirements from May 31, 2011 to August 31, 2011.

The submittal dated March 23, 2011 is available for public review. It contains enclosure 4 which provides non-proprietary version of enclosure 1 containing the security related information. 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 black ink, appearing to read "Mahesh Chawla".

Mahesh Chawla, Project Manager,  
Plant Licensing Branch III-1  
Division of Operating Reactor Licensing  
Office of Nuclear Reactor Regulation

Docket No. 50-341

Enclosure: Exemption

cc w/encl: Distribution via Listserv

NUCLEAR REGULATORY COMMISSIONDETROIT EDISON COMPANYFERMI 2DOCKET NO. 50-341EXEMPTION1.0 BACKGROUND

Detroit Edison Company (the licensee) is the holder of Facility Operating License No. NPF-43, which authorizes operation of Fermi 2. The license provides, 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 one boiling-water reactor located in Monroe County, Michigan.

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 (74 FR 13926), 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 two of these additional requirements that Fermi 2 now seeks an exemption

from the implementation date. All other physical security requirements established by this recent rulemaking have already been or will be implemented by the licensee by May 31, 2011.

By letter dated November 19, 2009 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML093270067), as supplemented by letter dated December 23, 2009 (ADAMS Accession No. ML100040010), the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's November 19, 2009, and December 23, 2009, letters, have certain portions which contain proprietary and safeguards information and, accordingly, are not available to the public. The licensee requested an exemption from the March 31, 2010, compliance date stating that it must complete a number of significant modifications to the current site security configuration before all requirements can be met. By letter dated March 19, 2010 (ADAMS Accession No. ML100350225), the NRC granted an exemption request to extend the compliance date for five requirements to May 31, 2011, versus the March 31, 2010, deadline. Being granted this exemption for the five requirements allowed the licensee to complete the modifications designed to update aging equipment and incorporate state-of-the-art technology to meet or exceed the noted regulatory requirements. By letter dated March 23, 2011 (ADAMS Accession No. ML111290414), the licensee has now requested an additional exemption from the current implementation date of May 31, 2011 to August 31, 2011 for two of these requirements, due to site-specific weather conditions, causing unanticipated delays in construction schedule.

### 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 exemption, as noted above, would allow an extension from May 31, 2011, to August 31, 2011, for the implementation date for two specified areas of the new rule. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR Part 73. 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 any such 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 (ADAMS Accession No. ML091410309)). 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.

#### Fermi 2 Schedule Exemption Request

The licensee provided detailed information in its letter dated March 23, 2011 (ADAMS Accession No. ML110840250), requesting an exemption. It describes a comprehensive plan which provides a timeline for achieving full compliance with the new regulation. Enclosure 1 contains security related information regarding the site security plan, status of security modifications, details of the specific requirements of the regulation for which the site cannot be in compliance by the May 31, 2011, deadline and why, the required changes to the site's security configuration, and a timeline with "critical path" activities that will enable the licensee to achieve full compliance by August 31, 2011. The timeline provides dates indicating when (1) construction began or will begin on various phases of the project (i.e., new equipment, buildings and fences), and (2) critical equipment will be installed, tested and become operational.

Notwithstanding the schedule exemptions of these limited requirements, the licensee indicated that it 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, 2011, the licensee also stated that Fermi 2 will be in full compliance with the regulatory requirements of 10 CFR 73.55, as published on March 27, 2009 (76 FR 13926).

#### 4.0 ENVIRONMENTAL CONSIDERATION

This exemption authorizes a scheduler exemption to the compliance date identified in 10 CFR 73.55(a)(1) for Fermi 2. The NRC staff previously prepared a Programmatic Environmental Assessment and Finding of No Significant Impact (76 FR 187) for the treatment of licensee exemption requests from the implementation date requirement of 10 CFR 73.55. Consistent with the referenced analysis, the NRC staff has determined that the licensee's

request constitutes an administrative (timing) change that would not have a significant effect on the quality of the human environment.

#### 5.0 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 August 31, 2011, with regard to two specified remaining requirements of 10 CFR 73.55. This conclusion is based on the staff's determination that Fermi 2 has made a good faith effort to meet the requirements in a timely manner, has sufficiently described the reasons for the unanticipated delays, and has provided an updated detailed schedule with adequate justification for the additional time requested for the extension, based on those delays and the original scope of work, that staff agrees is needed to ensure that the required system capabilities are met.

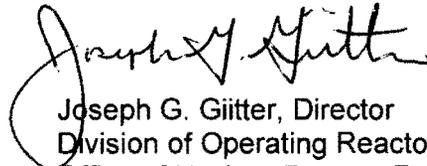
Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," an exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption. The NRC staff has determined that the long-term benefits that will be realized when the Fermi 2 modifications are completed justifies exceeding the full compliance date in the case of this particular licensee. The security measures Fermi 2 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 currently required by the security orders issued in response to the events of September 11, 2001. Therefore, the NRC concludes 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 May 31, 2011, deadline for the two remaining requirements specified in Enclosure 1 of the Detroit Edison letter dated March 23, 2011, the licensee is required to be in full compliance by August 31, 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.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 23<sup>rd</sup> day of May, 2011.

FOR THE NUCLEAR REGULATORY COMMISSION

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

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

May 23, 2011

Mr. Jack M. Davis  
Senior Vice President and  
Chief Nuclear Officer  
Detroit Edison Company  
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Sincerely,

**/RA/**

Mahesh Chawla, Project Manager,  
Plant Licensing Branch III-1  
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Office of Nuclear Reactor Regulation

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ADAMS Accession Nos.: LTR (NRR-106) ML111290359 Exemption FRN (NRR-042) ML111290176

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