

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-285; NRC-2017-0160]

Omaha Public Power District; Fort Calhoun Station, Unit No. 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a October 7, 2016, request from Omaha Public Power District (OPPD or the licensee), from certain regulatory requirements. The exemption would permit a certified fuel handler (CFH), in addition to a licensed senior operator, to approve the emergency suspension of security measures for Fort Calhoun Station, Unit No. 1 (FCS) during certain emergency conditions or during severe weather.

DATES: The exemption was issued on July 7, 2017.

ADDRESSES: Please refer to Docket ID NRC-2017-0160 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2017-0160. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**

You may obtain publicly available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: James Kim, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001; telephone: 301-415-4125; e-mail: James.Kim@nrc.gov.

I. Background

Omaha Public Power District (OPPD) is the holder of Renewed Facility Operating License No. DPR-40 for Fort Calhoun Station (FCS). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the NRC now or hereafter in effect. The facility consists of a pressurized-water reactor located in Washington County, Nebraska.

By letter dated August 25, 2016 (ADAMS Accession No. ML16242A127), OPPD submitted a certification to the NRC indicating it would permanently cease power operations at

FCS on October 24, 2016. On October 24, 2016, OPPD permanently ceased power operation at FCS. On November 13, 2016 (ADAMS Accession No. ML16319A254), OPPD certified that it had permanently defueled the FCS reactor vessel.

In accordance with § 50.82(a)(1)(i) and (ii), and § 50.82(a)(2) of title 10 of the *Code of Federal Regulations* (10 CFR), the specific license for the facility no longer authorizes reactor operation, or emplacement or retention of fuel in the respective reactor vessel, after certifications of permanent cessation of operations and of permanent removal of fuel from the reactor vessel are docketed for FCS.

By letter dated June 21, 2017 (ADAMS Accession No. ML17144A246), the NRC approved the Certified Fuel Handler Training and Retraining Program for FCS that supports the exemption request discussed herein. The CFH Training and Retraining Program is to be used to satisfy training requirements for the plant personnel responsible for supervising and directing the monitoring, storage, handling, and cooling of irradiated nuclear fuel in a manner consistent with ensuring the health and safety of the public. As stated in section 10 CFR 50.2, “Definitions,” CFHs are qualified in accordance with an NRC-approved training program.

II. Request/Action

On October 7, 2016 (ADAMS Accession No. ML16281A469), the licensee requested an exemption from § 73.55(p)(1)(i) and (ii), pursuant to § 73.5, “Specific exemptions.” The current § 73.55(p)(1)(i) and (ii) regulations state that a licensed senior operator, as a minimum, must approve the suspension of security measures during certain situations. The proposed exemption would authorize an CFH, in addition to the licensed senior operator, to approve the suspension of security measures under 10 CFR 73.55(p)(1)(i) and (ii) at FCS.

III. Discussion

The NRC's regulations related to security address the potential need to suspend security or safeguards measures under certain conditions. Accordingly, 10 CFR 50.54(x) and (y), first published in 1983, allow a licensee to take reasonable steps in an emergency that deviate from license conditions when those steps are "needed to protect the public health and safety" and there are no conforming comparable measures (48 FR 13966; April 1, 1983). As originally issued, the deviation from license conditions had to be approved by, as a minimum, a licensed senior operator. In 1986, in its final rule, "Miscellaneous Amendments Concerning the Physical Protection of Nuclear Power Plants" (51 FR 27817; August 4, 1986), the Commission issued § 73.55(a), which provided that the licensee may suspend any safeguards measures pursuant to § 73.55 in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent. The regulation further required that this suspension be approved as a minimum by a senior licensed operator prior to taking action.

In 1996, the NRC made a number of regulatory changes to address decommissioning. One of the changes was to amend § 50.54(x) and (y) to authorize a non-licensed operator called a "Certified Fuel Handler," in addition to a licensed senior operator, to approve such protective steps. In addressing the role of the CFH during emergencies in § 50.54(y), the Commission stated in the proposed rule, "Decommissioning of Nuclear Power Reactors" (60 FR 37374; July 20, 1995):

- A nuclear power reactor that has permanently ceased operations and no longer has fuel in the reactor vessel does not require a licensed individual to monitor core conditions.

- A certified fuel handler at a permanently shutdown and defueled nuclear power reactor undergoing decommissioning is an individual who has the requisite knowledge and experience to evaluate plant conditions and make these judgments.

In the 1996 final rulemaking, “Decommissioning of Nuclear Power Reactors” (61 FR 39278; July 29, 1996), the NRC added the following definition to § 50.2: “*Certified fuel handler* means, for a nuclear power reactor facility, a non-licensed operator who has qualified in accordance with a fuel handler training program approved by the Commission.” However, this rule did not propose or make parallel changes to the provisions governing suspension of security requirements set forth in § 73.55(a), and did not discuss the role of a non-licensed CFH.

In the 2009 final rule, “Power Reactor Security Requirements” (74 FR 13926; March 27, 2009), the NRC moved the security suspension requirements from § 73.55(a) to § 73.55(p)(1)(i) and (ii). The role of a CFH was not discussed in this rulemaking, so the suspension of security measures in accordance with § 73.55(p) continued to require approval as a minimum by a licensed senior operator, even for a site that otherwise is no longer operational.

However, pursuant to § 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, as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

A. The Exemption is Authorized by Law.

The requested exemption from § 73.55(p)(1)(i) and (ii) would allow a CFH, in addition to a licensed senior operator, to approve the suspension of security measures, under certain emergency conditions or severe weather. The NRC's current regulations in 50.54(y) allow a CFH to suspend security measures under certain conditions. Granting the exemption would align the licensee's practice under 73.55(p) with what is done under 50.54(y).

Consistent with 10 CFR 73.5, the Commission is allowed to grant exemptions from the regulations in 10 CFR part 73, as authorized by law. The NRC staff has determined that granting the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or other laws. Therefore, the exemption is authorized by law.

B. Will Not Endanger Life or Property or the Common Defense and Security.

Modifying the requirement to allow a CFH, in addition to a licensed senior operator, to approve suspension of security measures during emergencies or severe weather will not endanger life or property or the common defense and security for the reasons described in this section.

First, the requested exemption would not exempt the licensee from meeting the requirements set forth in 10 CFR 73.55(p)(2) that the "[s]uspended security measures must be reinstated as soon as conditions permit." Therefore, the exemption would not prevent the licensee from meeting the underlying purpose of § 73.55(p)(1)(i) to protect public health and safety even after the exemption is granted.

Second, the suspension for non-weather emergency conditions under § 73.55(p)(1)(i) will continue to be invoked only "when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications

that can provide adequate or equivalent protection is immediately apparent.” Therefore, the exemption would not prevent the licensee from meeting the underlying purpose of § 73.55(p)(1)(i) to protect public health and safety even after the exemption is granted.

Third, the suspension for severe weather under § 73.55(p)(1)(ii) will continue to be used only when “the suspension of affected security measures is immediately needed to protect the personal health and safety of security force personnel and no other immediately apparent action consistent with the license conditions and technical specifications can provide adequate or equivalent protection.” The requirement to receive input from the security supervisor or manager will remain. Therefore, the exemption would not prevent the licensee from meeting the underlying purpose of § 73.55(p)(1)(ii) to protect the health and safety of the security force.

Fourth, by letter dated June 21, 2017, the NRC approved OPPD’s CFH training and retraining program for the FCS facility. The NRC staff found that, among other things, the program addresses the safe conduct of decommissioning activities, safe handling and storage of spent fuel, and the appropriate response to plant emergencies. Because the CFH will be sufficiently trained and qualified under an NRC-approved program, the NRC staff considers a CFH to have sufficient knowledge of operational and safety concerns, such that allowing a CFH to suspend security measures during emergencies or severe weather will not result in undue risk to public health and safety.

In addition, the exemption does not reduce the overall effectiveness of the licensee’s physical security plan or affect the licensee’s ability to protect special nuclear material at FCS. Thus, the exemption would not have an adverse effect on the common defense and security. For the reasons set forth above, the NRC staff has concluded that the exemption would not reduce security measures currently in place to protect against radiological sabotage. Therefore, modifying the requirement to allow a CFH, in addition to a licensed senior operator, to approve the suspension of security measures in an emergency or during severe weather, does not

adversely affect public health and safety issues or the assurance of the common defense and security.

C. Is Otherwise in the Public Interest.

NRC regulations currently require that a licensed senior operator at a minimum must approve the suspension of security measures in 10 CFR 73.55(p)(1)(i) and (ii). However, since FCS is shutdown, the licensee is not required to have a licensed senior operator onsite. Therefore, it is unclear how the licensee would implement emergency or severe weather suspensions of security measures in the absence of a licensed senior operator. Omaha Public Power District's proposed exemption would allow a certified fuel handler, in addition to a licensed senior operator, to approve suspension of security measures in an emergency when "immediately needed to protect the public health and safety" or during severe weather when "immediately needed to protect the personal health and safety of security force personnel." Granting this exemption request to authorize a CFH to approve temporary suspension of security regulations during an emergency or severe weather would align with the comparable authority given to the CFH in 10 CFR 50.54(y).

This exemption is in the interest of the public for two reasons. First, the exemption provides the licensee with an efficient and rational method for invoking the temporary suspension of security matters that may be needed for protecting public health and safety or the safety of the security forces during emergencies and severe weather. Additionally, the consistent and efficient regulation of nuclear power plants serves the public interest by assuring consistency between the security regulations in 10 CFR part 73 and the operating reactor regulations in 10 CFR part 50, as well as the requirements concerning licensed operators in 10 CFR part 55. The NRC staff has determined that granting the licensee's proposed exemption would allow the licensee to designate a CFH with the appropriate qualifications for a

permanently shutdown and defueled reactor to approve the suspension of security measures during an emergency to protect the public health and safety, and during severe weather to protect the safety of the security force. These provisions are consistent with the authority provided by § 50.54(y). Therefore, the exemption is in the public interest.

D. Environmental Considerations.

The NRC's approval of the exemption from certain security requirements belongs to a category of actions that the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment. Specifically, the exemption is categorically excluded from further analysis under § 51.22(c)(25).

Under § 51.22(c)(25), the granting of an exemption from the requirements of any regulation of chapter I to 10 CFR is a categorical exclusion provided that (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought are in one of several categories, including requirements involving safeguard plans, and materials control and accounting inventory scheduling requirements; and requirements of an administrative, managerial, or organizational nature.

The Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, has determined that approval of the exemption request in accordance with §51.22(c)(25), involves no significant hazards consideration because permitting a CFH, in addition to a licensed senior operator, to approve the suspension of security requirements at a

defueled shutdown power plant does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Also there will be no significant change in the types or a significant increase in the amounts of any effluents that may be released offsite as well as no significant increase in individual or cumulative public or occupational radiation exposure. The exempted regulation is not associated with construction, so there is no significant construction impact. The exempted regulation neither concerns the source term (i.e., potential amount of radiation in an accident), nor accident mitigation measures. Thus, there is no significant increase in the potential for, or consequences of, a radiological accident. The requirement to have a licensed senior operator approve departures from security requirements involves safeguards plans, materials control, and managerial and organizational matters.

Therefore, pursuant to § 51.22(b) and (c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, the exemption 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 licensee's request for an exemption from the requirements of 10 CFR 73.55(p)(1)(i) and (ii), to authorize that the suspension of security measures at FCS must be approved as a minimum by either a licensed senior operator or a certified fuel handler.

The exemption is effective upon receipt.

Dated at Rockville, Maryland, this 7th day of July 2017.

For the Nuclear Regulatory Commission.

/RA/

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