

NUCLEAR REGULATORY COMMISSION
[Docket Nos. 52-025 and 52-026; NRC-2008-0252]
Southern Nuclear Operating Company Inc
Vogtle Electric Generating Plant Units 3 and 4

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a December 6, 2018, request from Southern Nuclear Operating Company, Inc. (SNC), as applicable to Vogtle Electric Generating Plant (VEGP) Units 3 and 4. Specifically, SNC requested an exemption that would modify the requirement for individuals who construct or direct the construction of safety- or security-related structures, systems, and components (SSCs) to be subject to a fitness-for-duty (FFD) program at nuclear power reactors under construction.

DATES: This exemption was issued on June 12, 2019.

ADDRESSES: Please refer to Docket ID **NRC-2008-0252** 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 Website:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2008-0252**. Address questions about NRC docket IDs in Regulations.gov to Jennifer Borges; telephone: 301-287-9127; e-mail: Jennifer.Borges@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 "[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 (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the exemption was submitted by letter dated December 6, 2018, and available in ADAMS under Accession No. ML18340A280.

- **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: Donald Habib, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1035; e-mail: Donald.Habib@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, and the City of Dalton, Georgia (collectively SNC) are the holders of facility Combined License (COL) Nos. NFP-91 and NPF-92, which authorize the construction and operation of VEGP Units 3 and 4. The COLs, issued under part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), "Licenses, Certifications, and Approvals for Nuclear Power Plants," provide, among other things, that the facilities are subject to all rules, regulations, and orders of the NRC or the Commission now or

hereafter in effect. The facilities consist of two AP1000 pressurized-water reactors located in Burke County, Georgia.

Because the Commission has not made the finding under section 52.103(g) for VEGP Units 3 and 4, 10 CFR 26.3(c) requires, in part, before the receipt of special nuclear material (SNM) in the form of fuel assemblies, that SNC comply with the requirements of 10 CFR part 26, "Fitness for Duty Programs," except for subpart I, "Managing Fatigue," and, no later than the receipt of SNM in the form of fuel assemblies, that SNC implement a 10 CFR part 26 program. Section 26.4(f) of 10 CFR requires, for VEGP Units 3 and 4, that any individual who is constructing or directing the construction of safety- or security-related SSCs shall be subject to an FFD program that meets the requirements of 10 CFR part 26, subpart K, "FFD Program for Construction."

II. Request/Action

Pursuant to 10 CFR 26.9, "Specific exemptions," SNC requested, by letter dated December 6, 2018 (ADAMS Accession No. ML18340A280), and by a supplement dated March 8, 2019 (ADAMS Accession No. ML19067A173), an exemption from the requirements of 10 CFR 26.4(f), as applicable to VEGP Units 3 and 4. Specifically, SNC requested an exemption that would modify the requirement for a limited number of individuals who are needed for a short period of time (30 days or fewer in a 60-day period) to construct or direct the construction of safety- or security-related SSCs such that those individuals would be allowed to come onsite under escort prior to the establishment of an operational protected area or the 10 CFR 52.103(g) finding. The exemption for VEGP Unit 3 would expire when a protected area is established for VEGP Unit 3, and the exemption for VEGP Unit 4 would expire when a protected area is established for VEGP Unit 4.

III. Discussion

Pursuant to 10 CFR 26.9, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 26 when the exemptions (1) are authorized by law, (2) will not endanger life or property, (3) will not endanger the common defense and security, and (4) are in the public interest.

1. The exemption is authorized by law

The regulation in 10 CFR 26.9 states, in part, that upon application of any interested person or on its own initiative, the Commission may grant such exemptions from the requirements of the regulations in 10 CFR part 26 as it determines are authorized by law. The NRC staff has determined that granting SNC's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1979, as amended, or the Commission's regulations. Therefore, this exemption is authorized by law.

2. The exemption will not endanger life or property

The exemption from the 10 CFR 26.4(f) requirement would allow SNC to construct or direct the construction of safety- or security-related SSCs at VEGP Units 3 and 4 using individuals who would not be subject to a 10 CFR part 26 FFD program, but who would be under direct observation of an escort. Because the exemption only enables the escorting of construction workers, the exemption does not, in part, change any SSC, any existing natural or man-made geological/biological feature, or other material property on the construction site nor does the exemption introduce any new industrial, chemical, or radiological hazard that would present itself as a latent or apparent adverse effect on life or property. The exemption also does not request any relaxation in work controls, processes, quality assurance, quality verification, or the

training, qualification, and personal injury protections afforded to individuals constructing or directing the construction of safety- or security-related SSCs.

To provide assurance that individuals who are escorted and construct or direct the construction of safety- or security-related SSCs only perform assigned duties and responsibilities, SNC stated that the escorts will be trained, in part, to: stop work if the escort identifies conditions that adversely affect a safety- or security-related SSC; immediately communicate with security if a problem arises; maintain control of their construction workers under escort; and observe workers for unsafe and improper actions and for aberrant behavior. The escorts will also be trained in behavioral observation techniques. SNC also stated that construction workers who are escorted will be escorted for a limited period of time (30 days or fewer in a 60-day period) and if this SNC-proposed administrative limit will be exceeded, SNC would remove the construction worker from the escort program and place him/her in the FFD program.

Consequently, the exemption does not endanger life or property principally because SNC's proposal would not result in a change that diminishes the personal safety protections provided to individuals on the construction site and would not result in a physical or material condition detrimental to the use or value of property. This occurs because the exemption is administrative and SNC has stated that construction workers will be escorted by individuals who are subject to the FFD program, trained, and empowered to ensure that individuals performing activities that would otherwise subject them to 10 CFR 26.4(f) follow SNC-established work processes and do not demonstrate physical and mental impairment that could adversely affect their ability to safely and competently perform their duties. This provides assurance that VEGP Units 3 and 4 will continue to be constructed, inspected, tested, accepted, maintained, and ultimately operated in accordance with applicable requirements by individuals who can safely and

competently perform assigned duties and responsibilities. Accordingly, the exemption will not endanger life or property.

3. The exemption will not endanger the common defense and security

The exemption from the 10 CFR 26.4(f) requirement would allow SNC to construct VEGP Units 3 and 4 using individuals who are not subject to a 10 CFR part 26 FFD program, but who would be under direct observation of an escort who is trained and empowered to ensure that individuals performing 10 CFR 26.4(f) duties and responsibilities follow SNC-established work processes and are not afforded unauthorized access to sensitive information. The exemption would not remove or relax any requirement for the design, construction, inspection, test, acceptance, maintenance, or operation of a physical protection system which will have capabilities for the protection of SNM at this fixed site and in transit or any safeguards system designed to protect against acts of radiological sabotage, nor will the exemption relax the safeguarding of sensitive information.

The implementation of the SNC escort program would not endanger the common defense and security principally because SNC's proposal would not result in a change that diminishes the physical protection plans, policies, procedures, or security related SSCs or programs at the site. This occurs because, under the SNC-proposed exemption, SNC will establish procedures that will require escorts to be trained and empowered to ensure that individuals performing 10 CFR 26.4(f) duties and responsibilities are acting in accordance with SNC-established work processes and do not demonstrate characteristics of an insider threat. Such a threat could be an individual who possesses both intent and access to sensitive information or SSCs, to aid or cause an attack, condition, or theft inimical to public health and safety or the common defense and security. Accordingly, the exemption will not endanger the common defense and security.

4. The exemption is otherwise in the public interest

In a letter dated December 6, 2018, SNC stated, in part, that requiring all individuals who perform 10 CFR 26.4(f) duties and responsibilities to be subject to a 10 CFR part 26, subpart K, FFD program prior to the 10 CFR 52.103(g) finding is costly and an unnecessary burden. As supplemented by a letter dated March 8, 2019, SNC stated that the exemption would result in a schedule benefit because individuals would be immediately available to perform emergent work activities “directly related to construction critical path . . . which would allow the licensee to bring the unit online earlier, resulting in reduced construction costs . . .” Furthermore, SNC stated that there would be a reduction in burden because the exemption would increase flexibility in the manner in which workers can be brought onsite during emergent construction activities.

The NRC staff finds that it is in the public’s interest that SNC be allowed to escort certain individuals who direct or perform 10 CFR 26.4(f) duties and responsibilities because the SNC-proposed exemption has a direct nexus to improved flexibility in construction scheduling, work planning, and conduct of construction activities. This occurs because the exemption would enable SNC to implement process and procedural changes in a manner that leverages immediately available construction workers for short duration construction activities without a reduction in the assurance of public health and safety or the common defense and security because of the SNC-proposed administrative controls for its escort program. This flexibility could enable SNC to implement methods to use public finances more effectively and efficiently to construct the facility while meeting licensing and regulatory requirements. For these reasons, the exemption is in the public interest.

5. Environmental Considerations

The NRC staff determined that the exemption discussed herein meets the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(25). Under

10 CFR 51.22(c)(25), granting of an exemption from the requirements of any regulation of chapter I of 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 involve certain categories of requirements, such as administrative and managerial requirements.

As required by 10 CFR 51.22(c)(25)(i), and using the criteria set out in 10 CFR 50.92(c), the NRC staff reviewed whether the exemption request involves no significant hazards consideration.

(1) Does the requested exemption involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed exemption from the requirements of 10 CFR 26.4(f) would allow SNC to use escorted construction workers to construct or direct the construction of safety- or security-related SSCs. The requested exemption does not alter the design, function, or operation of any plant equipment. Therefore, granting this exemption would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the requested exemption create the possibility of a new or different kind of accident from any accident previously evaluated?

The requested exemption does not alter the design, function, or operation of any plant equipment. The requested exemption does not create any new failure mechanisms, malfunctions, or accident initiators. Therefore, granting this exemption

does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the requested exemption involve a significant reduction in a margin of safety?

The requested exemption does not affect an SSC, SSC design function, or method of performing or controlling a design function. Construction FFD requirements are not related to or used to establish the design bases of an SSC nor are they considered in the safety analyses. Furthermore, the requested exemption does not exceed or alter a design basis or safety limit. Therefore, granting this exemption does not involve a significant reduction in a margin of safety.

As all of the responses to the above questions are in the negative, under 10 CFR 51.22(c)(25)(i), the NRC staff has concluded that the requested exemption involves no significant hazards consideration.

To grant the exemption, the requested exemption must not involve a significant change in the types or significant increase in the amounts of any effluents that may be released offsite [10 CFR 51.22(c)(25)(ii)]. The requested exemption does not alter the design, function, or operation of any plant equipment. There are no changes to effluent types, plant radiological or non-radiological effluent release quantities, any effluent release path, or the functionality of any design or operational features credited with controlling the release of effluents during plant operation or construction. Therefore, the NRC concludes that the proposed exemption does not involve a significant change in the types or significant increase in the amounts of any effluents that may be released offsite.

The requested exemption must not involve a significant increase in individual or cumulative public or occupational radiation exposure [10 CFR 51.22(c)(25)(iii)]. There are no changes to plant radiation zones, nor any change to controls required under 10 CFR part 20, "Standards for Protection Against Radiation," which preclude a

significant increase in occupational radiation exposure. Therefore, the NRC concludes that the proposed exemption does not involve a significant increase in individual or cumulative public or occupational radiation exposure.

To grant the exemption, the requested exemption must not involve a significant construction impact [10 CFR 51.22(c)(25)(iv)]. The requested exemption does not alter the materials or methods of constructing or testing of any SSCs. No change to the construction of the facility is being made as a result of this exemption. Therefore, the NRC concludes that the proposed exemption does not involve a significant construction impact.

To grant the exemption, the requested exemption must not involve a significant increase in the potential for or consequences from radiological accidents [10 CFR 51.22(c)(25)(v)]. The requested exemption does not alter the design, function, or operation of any plant equipment. There are no changes to plant radiation zones, nor any change to controls required under 10 CFR part 20 which preclude a significant increase in occupational radiation exposure. Therefore, the NRC concludes that the proposed exemption does not involve a significant increase in the potential for or consequences from radiological accidents.

The requested exemption involves employment suitability requirements related to FFD programs, as obtaining an FFD authorization is a prerequisite for working on or directing work on safety- or security-related SSCs [10 CFR 51.22(c)(25)(vi)(E)].

Based on the evaluation above, the NRC staff concludes that the exemption meets the criteria of 10 CFR 51.22(c). Therefore, in accordance with 10 CFR 51.22(b), an environmental impact statement or environmental assessment is not required for the NRC staff's consideration of this exemption request.

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 26.9, the

exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants SNC an exemption from 10 CFR 26.4(f) related to the FFD program for construction for a limited number of individuals who construct or direct the construction of safety- or security-related SSCs.

Dated at Rockville, Maryland, this 7th day of June 2019.

For the Nuclear Regulatory Commission.

/RA/

Robert M. Taylor, Director,
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