

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of
PUBLIC SERVICE COMPANY OF COLORADO
(Fort St. Vrain Nuclear Generating
Station)

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Docket No. 50-267

EXEMPTION

I.

The Public Service Company of Colorado (PSC or the licensee) is the holder of Possession-Only License (POL) No. DPR-34, which authorizes possession and maintenance of the Fort St. Vrain Nuclear Generating Station (FSV). The license provides, among other things, that the plant is subject to all rules, regulations, and Orders of the U. S. Nuclear Regulatory Commission now or hereafter in effect.

FSV is a high-temperature, gas-cooled reactor that is located at the licensee's site in Weld County, Colorado. FSV operated from January 31, 1974, to August 18, 1989. PSC shut down FSV due to control rod drive failures, and subsequently made the shut down permanent due to a discovery of degradation of the steam generator ring headers. On November 5, 1990, PSC submitted a Decommissioning Plan (DP) pursuant to 10 CFR 50.82 that proposed dismantling of FSV. On May 21, 1991, the NRC revised License No. DPR-34 to POL that allows possession but not operation of FSV. The DP was approved by NRC Order dated November 23, 1993. PSC is activately dismantling FSV. In addition, FSV has been defueled and all fuel was

transferred to the PSC Independent Spent Fuel Storage Installation (ISFSI)
The ISFSI is licensed under 10 CFR Part 72.

II.

By letter dated February 25, 1993, the licensee requested a reduction in their primary financial coverage and an exemption from participation in the industry retrospective rating plan for secondary level coverage as required in 10 CFR 140.11(a)(4).

III.

The justification presented by the licensee for the exemption request is that FSV is not authorized to operate, all nuclear fuel has been removed from the reactor facility and transferred to the ISFSI, and the risk of accidents resulting in a radiological release is now considerably less than during plant operation. The licensee contends that, with all nuclear fuel removed from the reactor facility, the potential accidents as evaluated in the FSV DP only involve events such as fires, electrical power outages, and the dropping of activated or contaminated materials during dismantling. PSC concludes that these events result in doses to an individual located at the emergency planning zone boundary that are orders of magnitude below 10 CFR Part 100 guidelines, and are a small fraction of U.S. Environmental Protection Agency's "Protective Action Guidelines." The NRC staff Safety Evaluation of the FSV DP (NRC Decommissioning Order dated November 23, 1992) confirmed the PSC conclusion.

Because the possession-only license and the decommissioning order prohibits operation of FSV, and all spent fuel has been transferred from the reactor, the licensee contended that FSV is outside the ambit of 10 CFR 140.11(a)(4) and that 10 CFR 140.12 applies with its minimum requirement of \$4,500,000 for financial protection.

Therefore, the licensee indicated that it believed that reduced financial protection is warranted and that \$50,000,000 in primary financial protection provides adequate coverage for liability stemming from any potential accident. PSC also cited the FSV DP to demonstrate that there were no credible accidents associated with FSV that are comparable, in consequence or severity, to the design basis accidents of an operating facility. PSC concluded that the requested \$50,000,000 in primary financial protection insurance coverage is adequate for any fire, accident, or other hazardous event that could credibly occur while decommissioning FSV.

PSC concluded that the requirement for secondary insurance only applies to plants licensed to operate and is not applicable to FSV. PSC stated that it should not be unfairly burdened with financial liability at another nuclear facility because potential damages from an accident at FSV are reduced to the extent that it could not benefit from the secondary protection. The NRC staff independently evaluated the legal and technical issues associated with the application of the Price-Anderson Act to permanently shutdown reactors in SECY-93-127, "Financial Protection Required of Licensees of Large Nuclear Power Plants During Decommissioning," May 10, 1993. In this evaluation, the staff concluded that the NRC has discretionary authority to respond to licensee requests

for reduction in the level of primary financial protection and withdrawal from participation in the industry retrospective rating plan. Lastly, the staff concluded that accidents and hazards insured against under Price-Anderson go beyond design basis accidents and beyond those considered "credible" as that term is used in 10 CFR Part 100 and in interpreting the application of that regulation. The Commission issued a Staff Requirements Memorandum (SRM) based on SECY-93-127 on July 13, 1993. In the SRM, the Commission approved the staff's recommendation to permit, through the exemption process, a reduction of primary level coverage to \$100,000,000 and a withdrawal from participation in the secondary financial protection layer.

In the exercise of its discretionary authority, the NRC may, so long as a potential hazard exists at a permanently shutdown reactor, require the full amount of primary financial protection and full participation in the industry retrospective rating plan. At such time that the hazard is determined to no longer exist, the NRC may reduce the amount of primary financial protection and permit the licensee to withdraw from participation in the industry retrospective rating plan.

Since the legislative history does not explicitly consider the potential hazards that might exist after termination of operation, the staff generically evaluated the offsite consequences associated with normal and abnormal operations, design basis accidents, and beyond design basis accidents for reactors that have been permanently defueled and shutdown. The staff concluded that, aside from the handling, storage, and transportation of radioactive materials, no reasonably conceivable

potential accident exists at FSV that could cause significant offsite damage.

A severe transportation accident could potentially result in local contamination requiring cleanup and offsite liabilities resulting from traffic disruption and loss of use. This type of accident would warrant maintaining some level of liability insurance.

The most significant accident sequence for a permanently defueled and shut down reactor with no fuel onsite involves a fire or the dropping of contaminated or activated components during decommissioning operations.

The NRC staff independently evaluated the legal and technical justifications for the exemption presented by PSC. The NRC recognizes that FSV is: 1) permanently shutdown; 2) defueled; 3) licensed with "possession only" status under a decommissioning order and an amended license that does not permit fuel at the reactor facility; and 4) actively being dismantled. The staff concurred with the PSC's evaluation of credible accidents at FSV and their minimal associated offsite consequences. The licensee identified need for continuing liability coverage, \$50,000,000, was limited to liability stemming from any fire, accident, or other hazardous events. However, coverage needs associated with transportation of radioactive materials or precautionary evacuations were not identified. Although the licensee presented legal views and opinions regarding the applicability of 10 CFR 140.12 versus 10 CFR 140.11(a)(4), the staff did not concur with these legal views and opinions.

The licensee also contended that compliance with existing regulations would result in potential payment of retrospective assessments under the secondary indemnity plan and payments of insurance premiums under the

primary financial protection plan. These payments would constitute an "unfair burden" to the licensee and its ratepayers. The staff recognizes that relief from financial protection requirements is warranted because the potential hazards and consequences associated with a permanently shut down reactor with no spent fuel are greatly reduced, and that a permanently shut down reactor does not contribute a level of risk to the participants in the secondary pool proportionate to that of an operating reactor.

The staff, on its own initiative, did consider liability coverage needs associated with decommissioning activities and transportation of radioactive materials. The results of our evaluation, as embodied in the July 13, 1993, SRM, based on SECY-93-127, allow a reduction in the amount of financial protection required of licensees of large nuclear plants that have been prematurely shut down. FSV meets the criterion established in SECY-93-127 for relief from financial protection requirements.

Although the licensee requested a new primary financial protection coverage level of \$50,000,000, the staff has also concluded that claims settlement experience at the Three Mile Island Unit 2 (TMI-2) (an accident which did not result in a significant release of radioactivity) provides a reasonable basis for establishing the appropriate level of primary insurance coverage. Because TMI-2 claims have reached \$60,000,000 and a large number of TMI-2 claims are still unsettled, the staff concluded that a level of \$100,000,000 for primary financial protection coverage is warranted. This level of primary insurance coverage is consistent with the SRM dated July 13, 1993.

IV.

The staff, based on its independent evaluation as embodied in the July 13, 1993, SRM on SECY-93-127 "Financial Protection Required of Licensees of Large Nuclear Power Plants During Decommissioning," has concluded that sufficient bases exist for our approval of relief from the financial protection requirements for the FSV. The staff has also concluded that granting the proposed exemption does not increase the probability or consequences of any accidents or reduce the margin of safety at this facility.

V.

Based on Sections III and IV above, the NRC has determined, that pursuant to 10 CFR 140.8, that this exemption is authorized by law and is otherwise in the public interest. Therefore, the NRC grants an exemption from the requirements from 10 CFR 140.11(a)(4) to the extent that primary financial protection in the amount of \$100,000,000 shall be maintained and that an exemption from participation in the industry retrospective rating plan (secondary level financial protection) is granted for FSV.

Pursuant to 10 CFR 51.32, the NRC has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (59 FR 6311, dated February 10, 1994).

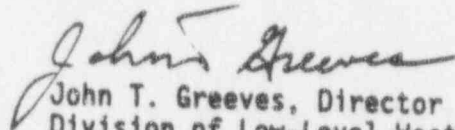
A copy of the licensee's request for the exemption and supporting documentation dated February 25, 1993, and the NRC staff's Safety Evaluation, included in the exemption, are available for public inspection at the NRC's Public Document Room, 2120 L Street, N.W., Washington, DC

20037, and at the Weld Library District - Downtown Branch, 919 7th Street,
Greeley, CO 80631.

This exemption is effective upon issuance.

Dated at Rockville, Maryland,
this 17 th day of *February*, 1994.

FOR THE NUCLEAR REGULATORY COMMISSION


John T. Greeves, Director
Division of Low-Level Waste Management
and Decommissioning
Office of Nuclear Materials Safety
and Safeguards

ENCLOSURE 2



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D. C. 20555-0001

Docket No. 50-267

AMENDMENT TO INDEMNITY AGREEMENT NO. B-50
AMENDMENT NO. 11

Effective February 18, 1994, Indemnity Agreement No. B-50, between Public Service Company of Colorado, and the Atomic Energy Commission, dated April 21, 1971, as amended, is hereby further amended as follows:

Item 2a of the Attachment to the indemnity agreement is deleted in its entirety and the following substituted therefor:

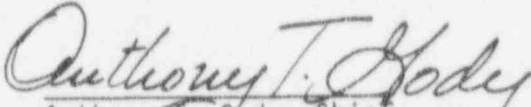
Item 2 - Amount of financial protection

- a. \$1,000,000 (From 12:01 a.m., April 21, 1971, to
12 midnight, December 20, 1973, inclusive)
- \$95,000,000 (From 12:01 a.m., December 21, 1973, to
12 midnight, February 28, 1974, inclusive)
- \$110,000,000 (From 12:01 a.m., March 1, 1974, to
12 midnight, March 20, 1975, inclusive)
- \$125,000,000 (From 12:01 a.m., March 21, 1975, to
12 midnight, April 30, 1977, inclusive)
- \$140,000,000* (From 12:01 a.m., May 1, 1977, to
12 midnight, April 30, 1979, inclusive)
- \$160,000,000* (From 12:01 a.m., May 1, 1979, to
12 midnight, June 30, 1989, inclusive)
- \$200,000,000* (From 12:01 a.m., July 1, 1989, to
12 midnight, February 17, 1994,
inclusive)

*and, as of August 1, 1977, the amount available as secondary financial protection

\$100,000,000 (From 12:01 a.m., February 18, 1994)

FOR THE U.S. NUCLEAR REGULATORY COMMISSION



Anthony T. Gody, Chief
Inspection and Licensing Policy Branch
Program Management, Policy Development
and Analysis Staff
Office of Nuclear Reactor Regulation

Accepted _____, 1994

By _____
Public Service Company of Colorado

ENCLOSURE 3