

NUCLEAR REGULATORY COMMISSION

Docket Nos. 50-247 and 50-286

Entergy Nuclear Operations, Inc.

Indian Point Nuclear Generating Unit Nos. 2 and 3

Exemption

I. Background.

Entergy Nuclear Operations, Inc. (the licensee) is the holder of Renewed Facility Operating License Nos. DPR-26 and DPR-64 for Indian Point Nuclear Generating Units Nos. 2 and 3, respectively (Indian Point 2 and 3). The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission), now or hereafter in effect. The Indian Point 2 and 3 facility consists of two pressurized-water reactors located in Buchanan, New York.

II. Request/Action.

By letter dated April 13, 2020, as supplemented by letter dated April 16, 2020 (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML20104C121 and ML20107J551, respectively), the licensee requested a temporary exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Appendix R, Section III.H, which requires (among other things) that the qualifications of fire brigade members include an annual physical examination to determine their ability to perform strenuous firefighting activities. Due to the Coronavirus Disease 2019 (COVID-19) Public Health Emergency (PHE) currently affecting the United States, and the state of emergency declared by the State of New York on March 7, 2020, the licensee has implemented pandemic planning strategies that include isolation activities and is requesting a temporary exemption from Appendix R, Section III.H, to extend the due dates for fire brigade members to have an annual physical examination in order to protect required site fire brigade personnel in response to the COVID-19 PHE. The exemption would apply to 15 Indian Point 2 and 3 staff who are members

of the fire brigade and extend, by 90 days, the due dates to conduct their physical examinations from April 23 through June 19, 2020, to July 22 through September 17, 2020, based on when an individual brigade member's physical examination is due.

The regulatory framework that applies to Indian Point 2 and 3 is contained in 10 CFR 50.48(b)(1), which requires that plants licensed before January 1, 1979, meet all sections of Appendix R to 10 CFR Part 50 (except Sections III.G, III.J, and III.O), unless the fire protection feature was specifically accepted by the NRC staff in a safety evaluation report (1) issued before February 19, 1981, as satisfying the provisions of Appendix A to Branch Technical Position (BTP) APCS 9.5-1, "Guidelines for Fire Protection for Nuclear Power Plants," or (2) issued before the publication of Appendix A of BTP APCS 9.5-1 (August 1976). Indian Point 2 and 3 began commercial operations in 1974 and 1976, respectively. The acceptability to conduct annual fire brigade physical examinations was not discussed in any safety evaluation report before August 1976 or February 19, 1981. Thus, Section III.H of 10 CFR Part 50, Appendix R, requires, among other things, that "the qualification of fire brigade members shall include an annual physical examination to determine their ability to perform strenuous fire-fighting activities."

III. 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 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) when special circumstances are present.

The licensee requested an exemption from 10 CFR Part 50, Appendix R, Section III.H, which requires, in part, annual fire brigade physical examinations be conducted for fire brigade members. The licensee claims that special circumstances in 10 CFR 50.12(a)(2)(v), which state

that, “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,” are present.

A. The Exemption is Authorized by Law.

The proposed exemption from 10 CFR Part 50, Appendix R, Section III.H, would temporarily extend, by 90 days, due dates occurring from April 23 through June 19, 2020, to conduct annual physical examinations for fire brigade members.

In accordance with 10 CFR 50.12, the NRC may grant an exemption from the requirements of 10 CFR Part 50 if it makes the requisite findings, including findings that the exemption is authorized by law and that special circumstances are present. The requested exemption is authorized by law based on the findings set forth below and because no other prohibition of law exists to preclude the activities that would be authorized by the exemption. The NRC staff also finds that granting 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 NRC staff concludes that the exemption is authorized by law.

B. The Exemption Will Not Present an Undue Risk to the Public Health and Safety.

The proposed exemption from 10 CFR Part 50, Appendix R, Section III.H, would temporarily extend, by 90 days, the due dates to conduct annual physical examinations for fire brigade members. The NRC staff finds that the exemption would not present an undue risk to the public health and safety because the licensee will implement the following actions prior to the expiration dates of the current physical examinations:

1. Each affected fire brigade member will complete an annual medical history questionnaire based on American National Standards Institute (ANSI) Z-86.6-2006, “Physical Qualifications for Respirator Use,” and the Occupational Safety and Health Administration Respirator Medical Evaluation Questionnaire from 29 CFR 1910.134, Appendix C.

2. Each completed medical history questionnaire will be reviewed by a licensed physician who will compare the answers to the previous medical examination to determine if a 90-day extension is acceptable.

3. Telehealth conferencing will be used to conduct a one-on-one assessment of the fire brigade member to complete the review, if needed.

In addition to the above, each fire brigade member is part of an Operations Watch Team and is subject to the provisions of the licensee's behavioral observation program, which is established by procedure, to ensure compliance with 10 CFR 73.56, "Access Authorization Program for Nuclear Power Plants." Under this program, a decrease in health or performance of a fire brigade member would be identified by an Operations supervisor. Also, as part of this program, fire brigade members are made acutely aware of the need to immediately report any change in their current health to their supervisor.

Also, a supervisor will inform each of the 15 affected fire brigade members, in person, of the exemption; the risks of conducting fire brigade activities, including wearing respiratory protection; the rationale for annual physical examinations; the deviation from the annual examination requirements; and the requirement that compliance be restored within 90 days of each original annual physical examination due date, or another date as indicated by a physician, whichever is sooner. The licensee indicated that it will use its corrective action program to document the performance of the planned actions discussed above.

Based on the performance of the above activities as described in the licensee's exemption request, as supplemented, the NRC staff concludes that granting the temporary exemption from the requirement in 10 CFR Part 50, Appendix R, Section III.H, related to conducting annual physical examinations for fire brigade members will not present an undue risk to the public health and safety.

C. The Exemption is Consistent with the Common Defense and Security.

The proposed exemption from 10 CFR Part 50, Appendix R, Section III.H, would temporarily extend, by 90 days, the due dates to conduct annual physical examinations for fire brigade members currently due from April 23 through June 19, 2020. The 90-day extension would not adversely impact the firefighting capability of the Indian Point 2 and 3 fire brigade, because all members are currently qualified for all tasks, and the plant fire protection features, firefighting plans, and fire protection equipment have not been altered. In addition, this temporary exemption would allow the affected fire brigade members to continue to be available to perform their functions during the COVID-19 PHE, provided a review of each member's medical history yields satisfactory results. Therefore, the NRC staff concludes that the common defense and security is not impacted by this temporary exemption.

D. Special Circumstances.

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(v), are present whenever an 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.

The licensee is requesting an exemption to allow a temporary extension of the 10 CFR Part 50, Appendix R, Section III.H requirement that annual physical examinations be conducted for fire brigade members. The exemption would apply to 15 Indian Point 2 and 3 staff who are members of the fire brigade and extend, by 90 days, the due dates to conduct these physical examinations currently due from April 23 through June 19, 2020, to July 22 through September 17, 2020, based on when an individual brigade member's physical examination is due.

The licensee had scheduled these annual physical examinations to comply with the regulation, and prior to the implementation of isolation activities (e.g., social distancing, group size limitations, self-quarantining, etc.) necessary to protect brigade personnel in response to the COVID-19 PHE, the licensee had successfully scheduled and completed previous annual

fire brigade physical examinations within the specified frequency. As discussed in Section III.B above, the licensee will implement certain actions, including having each member complete an annual medical history questionnaire, having that medical questionnaire reviewed by a licensed physician, and using telehealth conferencing if a one-on-one assessment is needed, prior to the respective member's approved extension period.

Since the exemption would only grant temporary relief from the regulation, and the licensee has made good faith efforts to comply with the regulation, the NRC staff finds that the special circumstances required by 10 CFR 50.12(a)(2)(v) exist for the granting of an exemption from 10 CFR Part 50, Appendix R, Section III.H, in regard to conducting the annual physical examinations for fire brigade members.

E. Environmental Considerations.

The granting of the proposed exemption is categorically excluded under 10 CFR 51.22(c)(25) and there are no special (or extraordinary) circumstances present that would preclude reliance on this exclusion. The NRC staff determined, per 10 CFR 51.22(c)(25)(vi)(E), that the proposed action would grant an exemption from education, training, experience, qualification, requalification, or other employment suitability requirements. The NRC staff also determined, per 10 CFR 51.22(c)(25)(i), that granting the proposed exemption involves no significant hazards consideration because the 90-day extension of due dates to conduct annual physical examinations for fire brigade members does not change the way the reactor protection systems perform, authorize any hardware or design changes, alter any assumptions made in the safety analyses, introduce any new failure modes, or alter any safety limits. Thus, the issuance of the exemption 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. Similarly, per 10 CFR 51.22(c)(25)(v), there is no significant increase in the potential for or consequences from radiological accidents.

In addition, the NRC staff determined that there would be no significant impacts to biota, water resources, air or terrestrial resources, historic properties, cultural resources, or socioeconomic conditions in the region. The requested temporary deferral of physical examinations, based on the medical review and other actions the licensee plans to implement, would maintain fire brigade availability during the COVID-19 PHE. Thus, per 10 CFR 51.22(c)(25)(ii) and (iii), there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite and no significant increase in individual or cumulative public or occupational radiation exposure. In addition, because the proposed exemption does not authorize any construction, per 10 CFR 51.22(c)(25)(iv), there is no significant construction impact. As such, there are no special (or extraordinary) circumstances present that would preclude reliance on this categorical exclusion.

Based on the above, the NRC staff concludes that the proposed exemption meets the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(25). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the granting of this exemption.

IV. Conclusions.

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, and is consistent with the common defense and security, and there are special circumstances present. Therefore, based upon the medical review and other actions described in the exemption request, as supplemented, the Commission hereby grants the licensee's request for a temporary exemption from the 10 CFR Part 50, Appendix R, Section III.H, fire brigade annual qualification requirement by extending, by 90 days, the completion time for annual fire brigade

physical examinations due from April 23 through June 19, 2020, to July 22 through September 17, 2020, for 15 brigade members at Indian Point 2 and 3.

Dated: April 22, 2020.

For the Nuclear Regulatory Commission.

/RA/

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