



Energy Harbor Nuclear Corp.
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April 24, 2020
L-20-142

10 CFR 73.5

ATTN: Document Control Desk
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

SUBJECT:
Perry Nuclear Power Plant, Unit No. 1
Docket No. 50-440, License No. NPF-58
Exemption Request due to COVID-19 Pandemic

Reference: EGM-20-002, "Enforcement Guidance Memorandum – DISPOSITIONING VIOLATIONS OF NRC REQUIREMENTS DURING CORONAVIRUS DISEASE 2019 (COVID-19)," dated April 15, 2020

On January 31, 2020, the U.S. Department of Health and Human Services declared a public health emergency (PHE) for the United States to aid the nation's healthcare community in responding to the Coronavirus Disease 2019 (COVID-19). On March 9, 2020, the Governor of the State of Ohio declared a state of emergency. In addition, on March 11, 2020, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization and, on March 13, 2020, the President of the United States of America declared the Coronavirus (COVID-19) pandemic a national emergency. In response to these declarations and in accordance with the corporate pandemic response plan, Energy Harbor Nuclear Corp. has postponed some site activities due to isolation activities (for example, social distancing, group size limitations, self-quarantining, and so on) and also anticipates the possibility of isolation of required station personnel to maintain necessary staffing levels. Consequently, Energy Harbor Nuclear Corp. will need certain temporary exemptions to the Code of Federal Regulations (CFR) identified in the enclosure for Perry Nuclear Power Plant, Unit No. 1 (PNPP).

In accordance with the provisions of 10 CFR 73.5, and consistent with the conditions specified in the EGM-20-002 (Reference), Energy Harbor Nuclear Corp. is requesting exemption from the requirements of Appendix B to Part 73 as identified in the enclosure, and associated items in the PNPP Training and Qualification Plan. The enclosure provides the justification.

Energy Harbor Nuclear Corp. commenced isolation activities necessary to protect required station staff on March 23, 2020 and estimates needing the exemption by

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May 8, 2020. The proposed exemption would apply to security personnel currently qualified on the items identified in the enclosure. The time period during which the exemption is required is not currently known, but will be in effect until 90 days after the PHE is ended or until December 31, 2020, whichever occurs first.

There are no regulatory commitments contained in this submittal. If there are any questions or if additional information is required, please contact Mr. Phil H. Lashley, Acting Manager, Nuclear Licensing and Regulatory Affairs, at (330) 315-6808.

Sincerely,

Frank R. Payne

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Enclosure:

Security Training Requalification Exemption Request Justification

cc: NRC Region III Administrator
NRC Resident Inspector
NRR Project Manager

1.0 SUMMARY DESCRIPTION

In accordance with the provisions of 10 CFR 73.5, and consistent with the conditions specified in EGM-20-002, "Enforcement Guidance Memorandum – DISPOSITIONING VIOLATIONS OF NRC REQUIREMENTS DURING CORONAVIRUS DISEASE 2019 (COVID-19)," April 15, 2020, Energy Harbor Nuclear Corp. requests a temporary exemption from the security training requalification provisions of Appendix B to Part 73 as identified in section 3.0 and associated items in the Perry Nuclear Power Plant, Unit No. 1 (PNPP) Training and Qualification Plan. This temporary exemption supports the isolation activities (for example, social distancing, group size limitations, self-quarantining, and so on) necessary to protect required site personnel in response to the COVID-19 virus. These activities are needed to ensure personnel are isolated from the COVID-19 virus and remain capable of maintaining plant security.

2.0 BACKGROUND

In an April 27, 2006 NRC Pandemic Flu workshop (Reference 1), participants determined that nuclear power plants would likely need to process a large number of requests for enforcement discretion or exemptions from NRC requirements. Subsequently NEI published a Pandemic Licensing Plan in 2007 (Reference 3) that provided a listing of regulations that, in a pandemic, licensees should review and determine if an exemption is required.

Energy Harbor Nuclear Corp. has reviewed the list of regulations and determined that exemptions are required for the regulations listed in section 3.0 for PNPP.

3.0 EXEMPTION DETAILS

For security personnel, as appropriate, Energy Harbor Nuclear Corp. anticipates not being able to meet the security training requirements of Appendix B to Part 73 and associated items in the PNPP Training and Qualification Plan, listed below:

- Energy Harbor Nuclear Corp. requests an exemption from meeting requirements for the following security training requalification tasks:
 - 10 CFR 73, Appendix B, VI.B.5.(a) - "At least annually, armed and unarmed individuals shall be required to demonstrate the capability to meet the physical requirements of this appendix and the licensee training and qualification plan."
 - 10 CFR 73, Appendix B, VI.C.3.(I)(1) - "Each member of each shift who is assigned duties and responsibilities required to implement the safeguards contingency plan and licensee protective strategy participates in at least one (1) tactical response drill on a quarterly basis and one (1) force-on-force exercise on an annual basis."
 - 10 CFR 73, Appendix B, VI.D.1.(b)(3) - "Armed individuals shall be administered an annual written exam that demonstrates the required knowledge, skills, and abilities to carry out assigned duties and responsibilities as an armed member of the security organization."

- 10 CFR 73, Appendix B, VI.D.2.(a) - “Armed and unarmed individuals shall be requalified at least annually in accordance with the requirements of this appendix and the Commission-approved training and qualification plan.”
 - 10 CFR 73, Appendix B, VI.E.1.(c) - “The licensee shall conduct annual firearms familiarization training in accordance with the Commission-approved training and qualification plan.”
 - 10 CFR 73, Appendix B, VI.E.1.(f) - “Armed members of the security organization shall participate in weapons range activities on a nominal four (4) month periodicity.”
 - 10 CFR 73, Appendix B, VI.F.5.(a) - “Armed members of the security organization shall be re-qualified for each assigned weapon at least annually in accordance with Commission requirements and the Commission-approved training and qualification plan, and the results documented and retained as a record.”
- The anticipated date and time Energy Harbor Nuclear Corp. will suspend identified requalification items is May 8, 2020 at 12:01 a.m.

Energy Harbor Nuclear Corp. will implement the following controls to ensure impacted security personnel maintain the knowledge, skills, and abilities required to effectively perform assigned duties and responsibilities:

- 10 CFR 73, Appendix B, VI.B.5.(a) - Measures have been established to ensure security personnel self-report and notify supervision or medical personnel, as appropriate, of changes related to their physical fitness that could impact their ability to perform their respective job function.
- 10 CFR 73, Appendix B, VI.C.3.(l)(1) – Energy Harbor Nuclear Corp. will conduct individual table top discussions during the shift and review of response locations with adherence to social distancing standards. Energy Harbor Nuclear Corp. will also provide officers with shift discussion topics utilizing lessons learned from previous exercises and based on training lesson plans/material objectives. Additionally, Energy Harbor Nuclear Corp. will provide for officer follow up questions and answers relevant to the focus topics with adherence to social distancing standards.
- 10 CFR 73, Appendix B, VI.D.1.(b)(3), (D)(2)(a), (E)(1)(c); and (F)(5)(a) – Energy Harbor Nuclear Corp. has established measures to ensure that individuals maintain performance capability despite not completing the annual requalification for the annual written exam, firearms familiarization and weapons requalification. Those measures should include lesson plan objective-based discussions topics regarding critical tasks necessary for performance of security duties and regarding the fundamentals of marksmanship.
- 10 CFR 73, Appendix B, VI.E.1.(f) – Range activities are challenged by current social distancing and safety guidelines relevant to COVID-19 response standards. Weapons range activities require significant staff support that potentially places armed individuals in the Energy Harbor Nuclear Corp. security organization and other security staff in close proximity to one another, increasing the likelihood of staff and officer exposure to COVID-19. Range activities present

additional hygiene issues relevant to range facilities during the PHE. Therefore, Energy Harbor Nuclear Corp. will establish measures to ensure that individuals maintain performance capability despite not completing weapons range activities on a nominal four-month periodicity. Those measures include discussion topics regarding relevant range activities and are based on range training lesson plan objectives to maintain knowledge of weapon performance requirements.

Energy Harbor Nuclear Corp. shall maintain a list of the names of the individuals who do not meet the requirements of 10 CFR Part 73, Appendix B. The list identifies the date(s) the individual exceeded required training periodicities. A period of 90 days after the PHE has ended or until December 31, 2020, whichever occurs first, will be utilized to restore compliance with to 10 Part 73, Appendix B and the PNPP Training and Qualification Plan.

4.0 TECHNICAL JUSTIFICATION OF ACCEPTABILITY

The U.S. Centers for Disease Control (CDC) has issued recommendations advising “social distancing” to prevent the spread of the COVID-19 Virus (Reference 3). Energy Harbor Nuclear Corp. has implemented isolation activities such as self-quarantining, group size limitations and social distancing to protect required site personnel in accordance with NEI 06-03, “Pandemic Threat Planning, Preparation, and Response Reference Guide,” (Reference 4). Ideally this will limit the spread of the virus among the station staff. However, it will require an exemption to the security training requirements in Appendix B to Part 73 and associated items in the PNPP Training and Qualification Plan as listed in section 3.0 because isolation activities restrict certain training activities. Maintaining a workforce healthy and onsite is preferable to having a sick workforce that is unavailable during a pandemic.

Due in part to the nature of the pandemic, isolation activities lasting longer than several weeks are expected, so in accordance with the Energy Harbor Nuclear Corp. pandemic response plan an extended recovery period following the end of these isolation activities is expected. Energy Harbor Nuclear Corp. will establish a recovery period of 90 days after these isolation activities are terminated to restore compliance with Appendix B to Part 73 and the PNPP Training and Qualification Plan.

5.0 JUSTIFICATION OF EXEMPTION

10 CFR 73.5, Specific exemptions, states that the NRC may grant exemptions from the requirements of the regulations of this part provided three conditions are met. They are:

- (1) The exemptions are authorized by law.
- (2) The exemptions will not endanger life or property or the common defense and security, and
- (3) The exemptions are otherwise in the public interest.

Energy Harbor Nuclear Corp. has evaluated the requested exemption against the criteria of 10 CFR 73.5 and determined the criteria are satisfied as described below.

1. This exemption is authorized by law

The security training requalification requirements in Appendix B to Part 73 are not required by any statute. The requested exemption is authorized by law in that no law precludes the activities covered by this exemption request. Granting of the request does not result in a violation of the Atomic Energy Act of 1954, as amended.

2. This exemption will not endanger life or property or the common defense and security.

The requested exemption will not endanger life or property or the common defense and security. The requested exemption is a one-time exemption to allow deferring of security training requalification requirements listed in section 3.0. Energy Harbor Nuclear Corp. had scheduled these requalification activities to comply with the regulation. However, these activities must be rescheduled to allow implementation of the Energy Harbor Nuclear Corp. pandemic plan mitigation strategies. These strategies serve the public interest by ensuring adequate staff isolation and maintaining staff health to perform their job function actions during the COVID-19 pandemic.

The proposed exemption is related to training requalification and does not change physical security plans or the defensive strategy. Security personnel impacted by this exemption are currently satisfactorily qualified on all required tasks. In addition, security personnel are monitored regularly by supervisory personnel and have implemented controls as identified in section 3.0. Therefore, granting the requested temporary one-time exemption will not endanger or compromise the common defense or security, or safeguarding of the PNPP.

3. This exemption is otherwise in the public interest.

The Energy Harbor Nuclear Corp. pandemic response plan is based on NEI 06-03, *Pandemic Threat Planning, Preparation, and Response Reference Guide* (Reference 4), which recommends isolation strategies such as sequestering, use of super crews or minimum staffing as well as social distancing, group size limitations and self-quarantining, in the event of a pandemic, to prevent the spread of the virus to the plant. NEI 06-03 provides other mitigation strategies that serve the public interest during a pandemic by ensuring adequate staff is isolated from the pandemic and remains healthy to perform their job function.

Keeping PNPP in operation during the pandemic will help to support the public need for reliable electricity supply to cope with the pandemic. As the US Departments of Homeland Security and Energy have stated in their guidance, the electric grid and nuclear plant operation make up the nation's critical infrastructure similar to the medical, food, communications, and other critical industries. If the plant operation is impacted because it cannot comply with the security training requalification requirements while isolation activities are in effect for essential crew members, the area electrical grid would lose this reliable source of baseload power. In addition, PNPP personnel could

face the added transient challenge of shutting down their respective plant and possibly not restarting it until the pandemic passes. This does not serve the public interest in maintaining a safe and reliable supply of electricity.

6.0 CONCLUSION

As demonstrated above, Energy Harbor Nuclear Corp. considers that this exemption request is in accordance with the criteria of 10 CFR 73.5. Specifically, the requested 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. A temporary exemption from identified sections of Appendix B to Part 73 and associated items in the PNPP Training and Qualification Plan at PNPP is required during and recovery from the current COVID-19 Pandemic.

7.0 ENVIRONMENTAL ASSESSMENT

Energy Harbor Nuclear Corp. is requesting an exemption from the requirements of Appendix B to Part 73 as listed in section 3.0 and associated items in the PNPP Training and Qualification Plan for meeting certain security training requalification requirements through the period that isolation activities are in effect for the required plant staff and an additional 90 day transition period following the end of isolation activities. The following information is provided in support of an environmental assessment and finding of no significant impact for the proposed exemption.

Energy Harbor Nuclear Corp. has determined that the exemption involves no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite; that there is no significant increase in individual or cumulative public or occupational radiation exposure; that there is no construction impact; and there is no significant increase in the potential for or consequences from a radiological accident. Furthermore, the requirements for which an exemption is being requested involve security training requalification requirements. Accordingly, the proposed exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of this proposed exemption request.

8.0 REFERENCES

1. "Summary of NRC Pandemic Flu Workshop Held on April 27, 2006" (ADAMS Accession Number ML061740190).
2. EGM-20-002, "Enforcement Guidance Memorandum – DISPOSITIONING VIOLATIONS OF NRC REQUIREMENTS DURING CORONAVIRUS DISEASE 2019 (COVID-19)", April 15, 2020.
3. "Interim Guidance for Businesses and Employers", retrieved from <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>, on March 17, 2020.
4. NEI 06-03, "Pandemic Threat Planning, Preparation, and Response Reference Guide", Revision 2, February 2020.