

NUCLEAR REGULATORY COMMISSION

Docket No. 50-440

Energy Harbor Nuclear Corp.

Energy Harbor Nuclear Generation LLC

Perry Nuclear Power Plant, Unit No. 1

Exemption

I. Background.

Energy Harbor Nuclear Corp. (EHNC) and Energy Harbor Nuclear Generation LLC (collectively, the licensees) are the holders of the Facility Operating License No. NPF-58 for Perry Nuclear Power Plant, Unit No. 1 (PNPP), which consists of a boiling-water reactor (BWR) located near Lake Erie in Lake County, Ohio. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, Commission) now or hereafter in effect.

II. Request/Action.

By letter dated April 24, 2020 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML20115E551), as supplemented by letter dated May 6, 2020 (ADAMS Accession No. ML20128J218), EHNC requested a temporary exemption from certain periodic requalification requirements for security personnel in Title 10 of the *Code of Federal Regulations* (10 CFR), Part 73, Appendix B, Section VI, "Nuclear Power Reactor Training and Qualification Plan for Personnel Performing Security Program Duties," pursuant to 10 CFR 73.5, "Specific exemptions." Specifically, 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 Ohio on March 9, 2020, EHNC requests a temporary exemption from

the following requirements in 10 CFR Part 73, Appendix B, Section VI, related to periodic training and requalification of security personnel at PNPP:

- Paragraph 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 [10 CFR Part 73, Appendix B] and the licensee training and qualification plan.”
- Paragraph C.3.(l)(1) in part: “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.”
- Paragraph D.1.(b)(3) in part: “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.”
- Paragraph D.2.(a): “Armed and unarmed individuals shall be requalified at least annually in accordance with the requirements of this appendix [10 CFR Part 73, Appendix B] and the Commission-approved training and qualification plan.”
- Paragraph E.1.(c): “The licensee shall conduct annual firearms familiarization training in accordance with the Commission-approved training and qualification plan.”
- Paragraph E.1.(f) in part: “Armed members of the security organization shall participate in weapons range activities on a nominal four (4) month periodicity.”
- Paragraph 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.”

EHNC requested that this temporary exemption expire 90 days after the end of the COVID-19 PHE, or December 31, 2020, whichever occurs first.

III. Discussion.

On January 31, 2020, the U.S. Department of Health and Human Services declared a PHE for the United States to aid the nation’s healthcare community in responding to COVID-19. On March 11, 2020, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization.

Pursuant to 10 CFR 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 when the exemptions are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest.

EHNC is requesting a temporary exemption from the requirements in paragraphs B.5.(a), C.3.(l)(1), D.1.(b)(3), D.2.(a), E.1.(c), E.1.(f), and F.5.(a) of 10 CFR Part 73, Appendix B, Section VI, related to the periodic training and requalification of security personnel, pursuant to 10 CFR 73.5. EHNC is requesting this temporary exemption to support licensee isolation activities (e.g., social distancing, group size limitations, and self-quarantining) to help protect required site personnel from the COVID-19 virus and ensure personnel remain capable of maintaining plant security. EHNC stated that these “isolation activities restrict certain training activities.” Notably, EHNC stated that: “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.”

EHNC also stated that the requested exemption does not change physical security plans or defensive strategy. More specifically, EHNC stated that security personnel impacted by this exemption are currently satisfactorily qualified on all required tasks and are monitored regularly by supervisory personnel.

Licensee Provided Controls to Maintain the Knowledge, Skills, and Abilities of Security

Personnel

EHNC has identified controls that have been or will be implemented at PNPP to ensure impacted security personnel maintain the knowledge, skills, and abilities required to effectively perform assigned duties and responsibilities during the period of this temporary exemption (i.e., up to 90 days following the end of the COVID-19 PHE, or December 31, 2020, whichever occurs first). A discussion of how these controls relate to the current requirements is provided below:

1. Paragraph B.5.(a) of 10 CFR 73, Appendix B, Section VI: The purpose of the annual physical requirements in paragraph B.5.(a) is to ensure armed and unarmed members of the licensee's security organization are capable of performing their assigned duties necessary for implementing the licensee's Commission-approved security plans, protective strategy, and implementing procedures. To help ensure impacted security personnel maintain the knowledge, skills, and abilities required to effectively perform assigned duties and responsibilities at PNPP, EHNC has established measures "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."
2. Paragraph C.3.(l)(1) of 10 CFR 73, Appendix B, Section VI: The purpose of the quarterly tactical drills and the annual licensee conducted force-on-force exercises is to ensure that the site security force maintains its contingency response readiness. Participation in these drills and exercises also supports the requalification of security

force members. To help ensure impacted security personnel maintain the knowledge, skills, and abilities required to effectively perform assigned duties and responsibilities at PNPP, EHNC described the measures it is taking to ensure contingency response readiness. These measures are: conducting individual table top discussions during the shift and review of response locations with adherence to social distancing standards; providing officers with shift discussion topics utilizing lessons learned from previous exercises and based on training lesson plans/material objectives; and providing for officer follow up questions and answers relevant to the focus topics with adherence to social distancing standards.

3. Paragraphs D.1.(b)(3), D.2.(a), E.1.(c), and F.5.(a) of 10 CFR 73, Appendix B, Section VI: The purpose of the annual requalification requirements is to ensure the licensee's armed and unarmed individuals possess the requisite knowledge, skills, and abilities to effectively perform assigned duties in accordance with the Commission-approved security plans, protective strategy, and implementing procedures for the site. To help ensure impacted security personnel maintain the knowledge, skills, and abilities required to effectively perform assigned duties and responsibilities at PNPP, EHNC stated that it "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." These measures include lesson plan objective-based discussions topics regarding critical tasks necessary for performance of security duties and regarding the fundamentals of marksmanship.
4. Paragraph E.1.(f) of 10 CFR 73, Appendix B, Section VI: The purpose of the weapons range activity is to ensure that armed individuals in the licensee's security organization maintain weapons proficiency in support of the licensee's physical protection program. To help ensure impacted security personnel maintain the

knowledge, skills, and abilities required to effectively perform assigned duties and responsibilities at PNPP, EHNC stated that it “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.”

Restoring Compliance with 10 CFR 73, Appendix B, Section VI

EHNC requested that this exemption expire 90 days after the end of the COVID-19 PHE, or December 31, 2020, whichever occurs first. EHNC indicates that the additional time period after the end of the COVID-19 PHE will be used to restore compliance with the periodic security training and requalification requirements at PNPP. To support restoring compliance with these requirements, EHNC stated that it will maintain a list with the names of the individuals that do not meet the periodic security requalification requirements, including the date(s) when each individual exceeds the required training periodicities. It is the NRC’s expectation that any annual licensee-conducted force-on-force exercises that are delayed will be rescheduled so that they are completed after the PHE ends. Security personnel that miss one or more quarterly tactical drills during the period of the exemption would need to resume participation in those drills after the exemption expires.

A. The Exemption is Authorized by Law.

EHNC is requesting an exemption from the requirements related to periodic training and requalification of security personnel in paragraphs B.5.(a), C.3.(l)(1), D.1.(b)(3), D.2.(a), E.1.(c), E.1.(f), and F.5.(a) of 10 CFR Part 73, Appendix B, Section VI. In accordance with 10 CFR 73.5, the Commission may grant exemptions from the regulations in 10 CFR Part 73, as authorized by law. The NRC staff finds that granting the proposed exemptions will not result in a violation of the Atomic Energy Act of 1954, as amended, or other laws, and is, thus, authorized by law.

B. The Exemption will not Endanger Life or Property or the Common Defense and Security.

EHNC stated that the requested exemptions will not endanger life or property or the common defense and security. The requested exemption would temporarily allow the identified security training and requalification requirements to be deferred for security personnel currently satisfactorily qualified at PNPP. EHNC indicated that although it had scheduled these requalification activities to comply with the regulation, these activities must be rescheduled to allow implementation of the EHNC pandemic response plan mitigation strategies. EHNC asserts that 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 PHE.

EHNC stated that the requested exemption is related to training requalification and does not change physical security plans or defensive strategy. EHNC stated that security personnel impacted by the requested exemption are currently satisfactorily qualified on all required tasks. EHNC also stated that security personnel are monitored regularly by supervisory personnel. As discussed above, EHNC identified controls that have been or will be implemented at PNPP to ensure impacted security personnel maintain the knowledge, skills, and abilities required to effectively perform assigned duties and responsibilities. Therefore, EHNC stated that granting the requested temporary exemption will not endanger or compromise the common defense or security or the safeguarding of PNPP. EHNC requested that the exemption expire 90 days after the end of the COVID-19 PHE, or December 31, 2020, whichever occurs first. EHNC stated that this timeframe is needed for it to restore compliance with the periodic security training and requalification requirements at PNPP.

The NRC staff finds that the controls EHNC has or will establish for the duration of the exemption are adequate to ensure that the required security posture at PNPP is maintained. These controls are adequate because they include a variety of mechanisms to help ensure impacted security personnel continue to maintain the knowledge, skills, and abilities required to

perform assigned duties and responsibilities, and as a result, will continue to ensure adequate security of PNPP. In addition, the requested duration of the exemption would allow EHNC time to restore normal requalification processes at PNPP in a systematic manner. For example, it may take time after the PHE has ended for security personnel affected by COVID-19 to fully recover and return to duty status. Based on the above, the NRC staff concludes that the proposed exemption would not endanger life or property or the common defense and security.

C. Otherwise in the Public Interest.

On April 17, 2020, the Cybersecurity & Infrastructure Security Agency (CISA) within the U.S. Department of Homeland Security (DHS) published Version 3.0 of its “Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response.” Although that guidance is advisory in nature, it is designed to ensure “continuity of functions critical to public health and safety, as well as economic and national security.” In addition, the Centers for Disease Control and Prevention (CDC) has issued recommendations (e.g., social distancing, limiting assemblies) to limit the spread of COVID-19.

EHNC states, in part, that:

The Energy Harbor Nuclear Corp. pandemic response plan is based on [the Nuclear Energy Institute (NEI) guidance document] 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.

EHNC stated that the requalification activities for security personnel at PNPP must be rescheduled to allow implementation of the EHNC pandemic response plan mitigation strategies. In addition, EHNC indicated that this exemption would support the licensee's implementation of isolation activities (e.g., social distancing, group size limitations, and self-quarantining) at PNPP. EHNC stated these actions serve the public interest by ensuring adequate staff isolation and maintaining staff health to perform their job function during the COVID-19 PHE.

Based on the above and the NRC staff's aforementioned findings, the NRC staff concludes that granting the temporary exemption is in the public interest because it allows EHNC to maintain the required security posture at PNPP while the facility continues to provide electrical power. The exemption also enables EHNC to reduce the risk of exposing essential security personnel at PNPP to COVID-19.

D. Environmental Considerations.

NRC approval of this exemption request is categorically excluded under 10 CFR 51.22(c)(25), and there are no special circumstances present that would preclude reliance on this exclusion. The NRC staff determined, per 10 CFR 51.22(c)(25)(vi)(E), that the requirements from which the exemption is sought involve education, training, experience, qualification, requalification, or other employment suitability requirements. The NRC staff also determined that approval of this exemption request involves no significant hazards consideration because it does not authorize any physical changes to the facility or any of its safety systems, nor does it change any of the assumptions or limits used in the facility licensee's safety analyses or introduce any new failure modes; no significant change in the types or significant increase in the amounts of any effluents that may be released offsite because this exemption does not affect any effluent release limits as provided in the facility

licensee's technical specifications or by the regulations in 10 CFR Part 20, "Standards for Protection Against Radiation"; no significant increase in individual or cumulative public or occupational radiation exposure because this exemption does not affect limits on the release of any radioactive material or the limits provided in 10 CFR Part 20 for radiation exposure to workers or members of the public; no significant construction impact because this exemption does not involve any changes to a construction permit; and no significant increase in the potential for or consequences from radiological accidents because this exemption does not alter any of the assumptions or limits in the facility licensee's safety analysis. In addition, the NRC staff determined that there would be no significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region. As such, there are no special circumstances present that would preclude reliance on this categorical exclusion. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

IV. Conclusions.

Accordingly, the NRC has determined that pursuant to 10 CFR Part 73.5, 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 EHNC's request to exempt PNPP from the requirements for periodic requalification of security personnel in paragraphs B.5.(a), C.3.(l)(1), D.1.(b)(3), D.2.(a), E.1.(c), E.1.(f), and F.5.(a) of 10 CFR Part 73,

Appendix B, Section VI. This exemption expires 90 days after the end of the COVID-19 PHE, or December 31, 2020, whichever occurs first.

Dated: May 11, 2020.

For the Nuclear Regulatory Commission.

Craig G. Erlanger, Director,
Division of Operating Reactor Licensing,
Office of Nuclear Reactor Regulation.