



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

May 13, 2020

Mr. Scott P. Murray
Manager, Facility Licensing
GE Hitachi Nuclear Energy
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Wilmington, NC 28402

SUBJECT: ISSUANCE OF EXEMPTION FROM 10 CFR 72.42(c) FOR GE HITACHI
NUCLEAR ENERGY L.L.C. MORRIS OPERATION INDEPENDENT SPENT
FUEL STORAGE INSTALLATION (CAC/EPID NOS. 001028/L-2020-LLE-0046)

Dear Mr. Murray:

This is in response to your request by letter dated April 30, 2020 (Agencywide Document Access and Management System (ADAMS) Accession No. ML20121A272) for an exemption under Title 10 of the *Code of Federal Regulations* (10 CFR) 72.7, from 10 CFR 72.42(c), for the GE Hitachi Nuclear Energy L.L.C. (GEH) Morris Operation Independent Spent Fuel Storage Installation (ISFSI) in Morris, Illinois. This request is consistent with the guidance in the April 7, 2020, letter issued by Mr. John W. Lubinski, Director, Office of Nuclear Material Safety and Safeguards (ADAMS Accession No. ML20094G166) on providing regulatory relief during the coronavirus disease 2019 (COVID-19) public health emergency (PHE).

In your letter, you requested an exemption to allow GEH to submit a license renewal application for the Morris Operation ISFSI less than two years before the expiration of the existing license and, if found to be sufficient by the NRC, still receive timely renewal protection under 10 CFR 72.42(c). The regulation in 10 CFR 72.42(c) provides timely renewal protection to licensees that submit sufficient license renewal applications at least two years before the expiration of the existing license. The Morris Operation ISFSI license, SNM-2500, expires on May 31, 2022. Accordingly, the timely renewal due date, per 10 CFR 72.42(c), is May 31, 2020. GEH requests an extension of this date to submit the license renewal application on or before July 31, 2020, while still being afforded protection of the timely renewal provision in 10 CFR 72.42(c).

GEH stated that the reason for requesting the exemption is that key technical staff working to complete the reviews and updates to license renewal documents are affected by a combination of state-issued restrictions from the current COVID-19 PHE and GEH's worker protection protocols associated with the COVID-19 pandemic. These restrictions have caused reduced staffing, impacted work schedules, and limited facility and information access necessary for GEH to prepare the license renewal application by the timely renewal due date of May 31, 2020. GEH stated that there is no undue risk to public health and safety from granting the requested exemption, and it is otherwise in the public interest because it will allow a complete and accurate set of renewal information to be provided by GEH to the NRC. The requested exemption also does not involve changes to security at the GEH Morris Operation ISFSI.

The regulation in 10 CFR 72.7, "Specific exemptions," allows the NRC to grant exemptions from the requirements of 10 CFR Part 72. The NRC staff has determined that granting GEH's requested exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest.

Authorized by Law

This exemption would allow GEH to submit a license renewal application for the Morris Operation ISFSI less than two years before the expiration of the existing license. Further, if GEH files the license application in proper form on or before July 31, 2020, GEH would receive timely renewal protection under 10 CFR 72.42(c). The purpose of 10 CFR 72.42(c), as it applies to NRC licensees, is to implement the "timely renewal" doctrine of Section 9(b) of the Administrative Procedure Act (APA), 5 U.S.C. 558(c), which states:

When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

The 2-year time period specified in 10 CFR 72.42(c) is the result of a discretionary agency rulemaking and not required by the APA. As stated above, 10 CFR 72.7 allows the NRC to grant exemptions from the requirements of 10 CFR Part 72. The NRC has determined that granting this exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, the APA, or the NRC's regulations. Therefore, the exemption is authorized by law.

Will Not Endanger Life or Property or the Common Defense and Security

The requested exemption to allow GEH to submit a license renewal application less than two years before the expiration of its existing license and receive timely renewal protection, rather than the two years specified in 10 CFR 72.42(c), is a scheduling change. The scheduling exemption does not change the manner in which the facility operates and maintains public health and safety, and no additional changes are made as a result of this exemption.

The NRC staff will perform a full and adequate safety and environmental review of GEH's license renewal application, once it is received. It should be noted, among the key matters central to the resolution of issues associated with license renewal and to the application of the "timely renewal" provision is the submission of an application in proper form. The NRC staff's completion of the license renewal review is dependent on GEH's cooperation in meeting established schedules for the submittal of any additional information required by the NRC, and the resolution of all issues demonstrating that issuance of a renewed license is warranted.

Pending final action on GEH's license renewal application, the NRC will continue to conduct all regulatory activities associated with licensing, inspection, and oversight, and will take whatever action may be necessary to ensure adequate protection of the public health and safety. This exemption does not affect NRC's authority to modify, suspend, or revoke a license for cause, such as a serious safety concern. This exemption does not change security at the GEH Morris Operation ISFSI. Based on the above, the NRC finds that this exemption will not impact life or property or the common defense and security.

Otherwise in the Public Interest

The NRC staff reviewed GEH's request and acknowledges that state restrictions on business activities as a result of the COVID-19 PHE have caused reduced staffing, impacted work schedules, and limited facility and information access necessary for GEH to prepare its license renewal application by May 31, 2020, the timely renewal due date in 10 CFR 72.42(c). The NRC staff finds that the impacts from the COVID-19 PHE provide good cause for allowing an extension of the timely renewal due date, and the extension will allow GEH to provide a complete license renewal application for NRC to review. Therefore, the NRC staff finds that granting the requested exemption is in the public interest.

Environmental Consideration

The NRC staff considered whether there would be any significant environmental impacts associated with the exemption from the scheduling requirement in 10 CFR 72.42(c). The regulation in 10 CFR 51.22(c)(25)(vi)(G) provides a categorical exclusion for the granting of licensee exemption requests from NRC scheduling requirements.

This exemption constitutes a change to the schedule by which GEH must submit its license renewal application and still receive timely renewal protection and, therefore, is unrelated to any operational restriction. Accordingly, the NRC staff has determined that the exemption request 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. Therefore, the granting of the exemption request involves no significant hazards consideration, per 10 CFR 51.22(c)(25)(i). The NRC staff has also determined there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, per 10 CFR 51.22(c)(25)(ii), and no significant increase in individual or cumulative public or occupational radiation exposure, per 10 CFR 51.22(c)(25)(iii). The exemption is not associated with construction, so the NRC staff has determined there is no significant construction impact, per 10 CFR 51.22(c)(25)(iv). Because the exemption is unrelated to any operational restriction, the NRC staff has determined there is no significant increase in the potential for, or consequences from, a radiological accident, per 10 CFR 51.22(c)(25)(v).

In addition, the NRC staff has 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 extraordinary circumstances present that would preclude reliance on this categorical exclusion.

Therefore, the NRC approval of this exemption request is categorically excluded under 10 CFR 51.22(c)(25), and there are no extraordinary circumstances present that would preclude reliance on this exclusion. Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this requested exemption.

Conclusion

Based on the above, the NRC staff finds that (1) this exemption is authorized by law, (2) this exemption will not endanger life or property or the common defense and security, and (3) this exemption is otherwise in the public interest. Therefore, the NRC hereby grants GEH an exemption from the scheduling requirement of 10 CFR 72.42(c) for the Morris Operation ISFSI.

This exemption will allow GEH to submit a license renewal application for the Morris Operation ISFSI less than two years before the expiration of the existing license, while being afforded protection of the timely renewal provision contained in 10 CFR 72.42(c).

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the publicly available records component of the NRC's document system, ADAMS. ADAMS is accessible from the NRC Website at <http://www.nrc.gov/reading-rm/adams.html>.

This exemption is effective upon issuance and expires at midnight on August 1, 2020.

Sincerely,

John B. McKirgan, Chief
Storage and Transportation Licensing Branch
Division of Fuel Management
Office of Nuclear Material Safety
and Safeguards

Docket No. 72-01
License No. SNM-2500

CAC No. 001028
EPID No. L-2020-LLE-0046

cc: Morris Operation ISFSI Service List

Morris Operation ISFSI Service List

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