



May 21, 2020
L-2020-084
10 CFR 73.5
10 CFR 26.9

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

RE: Turkey Point Nuclear Plant, Units 3 and 4
Docket Nos. 50-250 and 50-251
Renewed Facility Operating Licenses DPR-31 and DPR-41
Exemption Request for Access Authorization and Fitness for Duty Requirements due to COVID-19 Pandemic

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 11, 2020, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization and, on March 13, 2020, President Donald Trump declared the Coronavirus (COVID-19) pandemic a national emergency. In addition, Florida Governor Ron DeSantis issued on March 9, 2020, Executive Order 20-52, declaring a State of Emergency due to COVID-19. In response to these declarations and in accordance with the Florida Power & Light Company (FPL) Pandemic Response Plan, FPL has had to postpone some site activities at Turkey Point Nuclear Plant, Units 3 and 4 (Turkey Point) due to isolation activities (e.g., social distancing) and anticipates isolation of required station personnel in order to maintain the necessary staffing levels. Consequently, and in accordance with the provisions of 10 CFR 26.9 and 10 CFR 73.5, FPL is requesting an exemption from certain requirements of 10 CFR 26 and 10 CFR 73.56 associated with the Turkey Point access authorization and fitness-for-duty programs. Technical justification for the exemptions is provided in the enclosure to this letter.

FPL commenced isolation activities to protect Turkey Point staff from the COVID-19 virus in March 2020 and estimates the requested exemptions will become necessary in June 2020. The exemptions would apply to personnel performing the duties identified in 10 CFR 73.56(b)(1) and 10 CFR 26.4. The time period during which the exemptions are required is not currently known but would be in effect no later than 90 days after the PHE is ended or December 31, 2020, whichever occurs first.

Should you have any questions regarding this submission, please contact Mr. Robert Hess, Turkey Point Licensing Manager, at 305-246-4112.

Sincerely,

A handwritten signature in blue ink, appearing to read 'B. Stamp', written over a horizontal line.

Brian Stamp
Site Director, Turkey Point Nuclear Plant
Florida Power & Light

Enclosure - Access Authorization/Fitness for Duty Exemption Request

USNRC Regional Administrator, Region II
USNRC Project Manager, Turkey Point Nuclear Plant
USNRC Senior Resident Inspector, Turkey Point Nuclear Plant

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Access Authorization/Fitness for Duty Exemption Request

1.0 SUMMARY DESCRIPTION

Florida Power & Light Company (FPL) requests a temporary exemption from the access authorization and fitness-for-duty provisions of 10 CFR 26 and 10 CFR 73.56, as identified in section 3.0, for Turkey Point Nuclear Plant, Units 3 and 4 (Turkey Point). The exemptions support isolation activities (e.g., social distancing, group size limitations, self-quarantining, etc.) necessary to protect required site personnel in response to the Coronavirus Disease 2019 (COVID-19) public health emergency (PHE). These activities are needed to ensure that essential Turkey Point personnel are isolated from the COVID-19 virus.

2.0 BACKGROUND

In an April 27, 2006 NRC Pandemic Flu workshop (Reference 8.1), 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 8.2) that provided a listing of regulations which, in a pandemic, licensees should review and determine if an exemption is required. FPL has reviewed the recommended regulation listing and determined that exemptions are required as described herein.

3.0 EXEMPTION DETAILS

For plant personnel performing duties described in 10 CFR 73.56(b)(1) and 10 CFR 26.4, as appropriate, FPL anticipates not being able to meet the access authorization and fitness-for-duty requirements of 10 CFR 26 and 10 CFR 73.56 as indicated in the table below. The exemptions would authorize flexibility in managing Turkey Point activities by allowing alternative controls which provide reasonable assurance that individuals are trustworthy and reliable and are not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause for the duration of the PHE. Upon NRC approval, FPL will suspend the listed requirements at Turkey Point in accordance with the specified limitations and controls until no later than 90 days after the COVID-19 PHE has ended or December 31, 2020, whichever occurs first.

| Regulations Requiring Exemption | Description | Exemption Limitations and Controls |
|--|---|---|
| 10 CFR 26.33; 10 CFR 73.56(f)(2)(v); and 10 CFR 73.56(i)(1)(i), (ii), and (iv) | Behavioral Observation for Licensee Staff Offsite Who Have Previously Been Granted Access Authorization | Only applies to individuals offsite who already have been granted authorization. Establish alternative controls for BOP using electronic means (2017 NEI white paper). |
| 10 CFR 26.41(b), (c)(1)-(2), (d)(3), and (g)(5); and 10 CFR 73.56(n)(1) - (2) | Auditing AA and FFD Programs | Exemption conditioned on maintaining documentation of original audit schedule, a new audit schedule justified by the COVID-19 actions and impacts and restoring compliance as soon as reasonably practicable. |

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| Regulations Requiring Exemption | Description | Exemption Limitations and Controls |
|---|---|--|
| 10 CFR 26.29(c)(2), (c)(3), and (d), and 10 CFR 73.56(f)(2)(ii)(C), (iv), and (v) | AA and FFD Refresher Training for Personnel Who Have Previously Been Granted Access Authorization | Only applies to individuals who already have been granted authorization. If a refresher training exam cannot be proctored, the individual is still required to take and pass the exam remotely to maintain authorization. |
| 10 CFR 26.31(c)(2) | Management Actions on Possible Impairment (for-cause testing) | Do not test individual who has indications of COVID-19 - send home. Test individual if no COVID-19 indications are present. Documentation and restoration of compliance. |
| 10 CFR 26.61(a)(1); 10 CFR 26.63(c)(3); 10 CFR 26.63(f)(2) and (3); 10 CFR 26.69(b)(2) and (c)(2); 10 CFR 73.56(d)(3), (d)(4)(iv) and (B), (d)(5), and (d)(7); and, 10 CFR 73.56(h)(4)(ii)(A) and (B) | Self-Disclosure, Suitable Inquiry, and Background Checks | Establish alternate controls using NEI 03-01 "best effort" attempts. |
| 10 CFR 26.65(d)(1)(i) and (ii); 10 CFR 26.65(e)(1) and (2); 10 CFR 73.56(i)(1)(v)(A); 10 CFR 73.56(i)(1)(v)(B)(1) - (5) and (C); and 10 CFR 73.56(i)(1)(vi) and (i)(2) | Reinvestigations, Reinstates, and Fingerprinting | Only applies to individuals who currently maintain unescorted access authorization, have no breaks of service, and are subject to a licensee's Behavioral Observation Program, drug and alcohol testing, verification of true identity, and no pending reported legal actions – reviewing official determines no other disqualifying information exists. |
| 10 CFR 26.31(c)(5) and 26.31(d)(2)(iv) | Managing Random Testing Program and Collection Facility | Acknowledgement of individuals offsite and do not have equal probability of being tested. The selected individual would not be notified to appear for a test until access to the site was restored and the collector and donor was reasonably available. |
| 10 CFR 26.31(d)(2)(i) and 10 CFR 26.405(b)(1) | Managing Random Testing Program and Collection Facility | Documentation and restoration of compliance. |

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| Regulations Requiring Exemption | Description | Exemption Limitations and Controls |
|--|--|--|
| 10 CFR 26.31(d)(2)(i)(A) and (B) | Managing Random Testing Program and Collection Facility | Documentation and restoration of compliance. |
| 10 CFR 26.31(d)(2)(ii) | Managing Random Testing Program and Collection Facility | Documentation and restoration of compliance. |
| 10 CFR 26.31(d)(2)(v) | Managing Random Testing Program and Collection Facility | Documentation and restoration of compliance. |
| 10 CFR 26.165(b)(5) | MRO Timeliness Requirement, Testing at a 2nd HHS-certified Lab | Documentation and restoration of compliance. |
| 10 CFR 26.185(d)(3) | MRO Timeliness Requirement, Donor Contact | The licensee shall document each occurrence and the MRO shall contact the individual as soon as reasonably practicable, and within 2 additional business days. |
| 10 CFR 26.185(p) | MRO Timeliness Requirement, Results Review | Documentation and restoration of compliance within 15 days after receiving the laboratory test result. |
| 10 CFR 26.155(a) - (e), 10 CFR 26.161(a) - (f), and 10 CFR 26.167(a) - (e) | HHS-Certified Laboratory Personnel, Validity Testing, and QA | Assessment of the impact on Part 26 testing (worker protection). |
| 10 CFR 26.169(a) | HHS-Certified Laboratory Test Results | The laboratory must conduct testing as soon as reasonably practicable. |
| 10 CFR 26.31(c)(4), 26.69(b)(6)(i)-(iii), and 10 CFR 26.405(c)(4) | Follow-up Testing | Document each instance when follow-up testing was not completed, and at the earliest practicable opportunity reinstate testing consistent with the testing schedule in the follow-up testing plan. |
| 10 CFR 26.119(a) | Shy Bladder Determinations | Provide up to 10 additional calendar days beyond the 5-day requirement to obtain the medical exam and provide documentation to the MRO (not to exceed 15 days from the collection date, otherwise access is denied). |
| 10 CFR 26.168 | Blind Performance Test Sample (BPTS) Program | Submit as many blinds as possible to meet the requirement for the quarter. Do not "catch up" blinds in subsequent quarters. |

| Regulations Requiring Exemption | Description | Exemption Limitations and Controls |
|---------------------------------------|---|---|
| 10 CFR 26.189(c) | Determination of Fitness – For Cause | If an individual cannot have a face-to-face evaluation conducted due to potential COVID-19 issues, alternate electronic means may be the only way to make a Determination of Fitness at that time. |
| 10 CFR 26.31(b)(1)(i) and 26.31(b)(2) | FFD Program Personnel - Sources of Authorization Information and Offsite Drug and Alcohol Testing | Verification that the individual is on official business and behavioral observation/escorting while onsite. Should the transporter appear impaired, the licensee shall notify the NRC operations center, NRC regional office, and the Department of Energy. |
| 10 CFR 26.4(j)(1) - (4) | Federal and State Official Access to NRC-Licensed Facilities | Determination of Fitness - alternate measure for face-to-face. Consider electronic communication with provider with exemption. |

4.0 TECHNICAL JUSTIFICATION OF ACCEPTABILITY

The U.S. Centers for Disease Control (CDC) has issued recommendations advising “social distancing” to reduce the spread of the COVID-19 Virus (Reference 8.3). At Turkey Point, FPL has implemented 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 8.4). Ideally, these activities will limit the spread of the COVID-19 virus among the station staff. However, implementation will require exemptions to the access authorization and fitness-for-duty requirements of 10 CFR 26 and 10 CFR 73.56, as listed in section 3.0, since the isolation activities restrict personnel from performing certain activities. Maintaining a healthy workforce onsite is preferable to a workforce that is unavailable during the pandemic.

Due in part to the nature of the COVID-19 pandemic, isolation activities lasting longer than several weeks are expected. In accordance with FPL’s Pandemic Response Plan, an extended recovery period will likely follow. Thereby, FPL will restore full compliance with 10 CFR 26 and 10 CFR 73.56 within 90 days after the PHE is ended or December 31, 2020, whichever occurs first.

5.0 JUSTIFICATION OF EXEMPTION

10 CFR 26.9, Specific exemptions, and 10 CFR 73.5, Specific Exemptions, state that the NRC may grant exemptions from the regulations therein provided the following conditions are met:

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

FPL has evaluated the requested exemptions against the 10 CFR 26.9 and 10 CFR 73.5 criteria for specific exemptions and has determined that each are satisfied as described below.

- (1) The exemption is authorized by law

Access authorization and fitness-for-duty requirements in 10 CFR 73.56 and 10 CFR 26 are not required by any statute. The requested exemption is authorized by law given 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) The exemption will not endanger life or property or the common defense and security.

The requested exemptions will not endanger life or property or the common defense and security. The requested exemptions are one-time exemptions to allow temporary relief from access authorization and fitness-for-duty requirements of 10 CFR 26 and 10 CFR 73.56, as listed in section 3.0 of this exemption request. These exemptions serve the public interest by implementing isolation activities and controls which assure the health and availability of essential Turkey Point staff during the COVID-19 pandemic.

The proposed exemptions are related to access authorization and fitness-for-duty requirements and do not change physical security plans or the defensive strategy. FPL will continue to meet all other access authorization and fitness-for-duty requirements not listed in section 3.0. Therefore, granting the exemption request will not endanger or compromise the common defense or security, or safeguarding of Turkey Point.

- (3) The exemption is otherwise in the public interest.

FPL's pandemic response plan is based on NEI 06-03, Pandemic Threat Planning, Preparation, and Response Reference Guide (Reference 8.4) which recommends isolation strategies such as sequestering, use of super crews or minimum staffing as applicable, social distancing, group size limitations, and self-quarantining in an event of a pandemic. NEI 06-03 provides other mitigation strategies that serve the public interest during a pandemic by assuring adequate staff are isolated from the pandemic and remain healthy and available to perform their job function(s).

Turkey Point operation during the pandemic supports the public need for a reliable source of electricity to cope with the COVID-19 pandemic. The electric grid, including nuclear plant operation, comprise the nation's critical infrastructure similar to the medical, food and communications industries. Compliance with certain access authorization and fitness-for-duty requirements impair Turkey Point implementation of the CDC recommendations (social distancing, group size limitations, self-quarantining etc.) which minimize the spread of COVID-19, thereby challenging safe and reliable operation. Without the CDC recommended activities, Turkey Point could be forced to shut down and possibly maintain the plant in a shutdown condition for the duration of the pandemic. Maintaining Turkey Point in a shutdown condition for the duration of the pandemic would not serve the public interest in providing a reliable source of baseload electrical power.

6.0 **CONCLUSION**

As demonstrated above, the exemption request is in accordance with the specific exemption criteria of 10 CFR 26.9 and 10 CFR 73.5. Specifically, the requested exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common

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defense and security. As such, a temporary exemption from the identified sections of 10 CFR 26 and 10 CFR 73.56 at Turkey Point is justified during and upon recovery from the COVID-19 PHE.

7.0 **ENVIRONMENTAL ASSESSMENT**

FPL requests exemptions from certain access authorization and fitness-for-duty requirements of 10 CFR 26 and 10 CFR 73.56 at Turkey Point. Specifically, the exemptions are necessary from the 10 CFR 26 and 10 CFR 73.56 requirements listed in section 3.0 of this exemption request, through the period that COVID-19 related activities are in effect and an additional transition period of 90 days after the PHE is ended or December 31, 2020, whichever occurs first.

FPL has determined that the exemptions involve 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 access authorization and fitness-for-duty requirements. Accordingly, the proposed exemptions meet 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**

- 8.1 USNRC Office of Nuclear Security and Incident Response - Sustaining Safe Nuclear Operations in an Influenza Pandemic, Summary of NRC Pandemic Flu Workshop Held on April 27, 2006 (ADAMS Accession Number ML061740190).
- 8.2 Nuclear Energy Institute White Paper, Pandemic Licensing Plan, January 2001 (ADAMS Accession No. ML070470653)
- 8.3 Centers for Disease Control and Prevention, Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19); retrieved from <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>, March 17, 2020
- 8.4 Nuclear Energy Institute (NEI) 06-03, Pandemic Threat Planning, Preparation, and Response Reference Guide, Revision 2, February 2020