



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

September 3, 2020

Mr. John Dent, Jr.
Vice President and Chief
Nuclear Officer
Nebraska Public Power District
72676 648A Avenue
P.O. Box 98
Brownville, NE 68321

SUBJECT: COOPER NUCLEAR STATION – TEMPORARY EXEMPTION FROM BIENNIAL EMERGENCY PREPAREDNESS EXERCISE REQUIREMENTS OF 10 CFR PART 50, APPENDIX E, “EMERGENCY PLANNING AND PREPAREDNESS FOR PRODUCTION AND UTILIZATION FACILITIES,” SECTION IV.F (EPID L-2020-LLE-0102 [COVID-19])

Dear Mr. Dent:

The U.S. Nuclear Regulatory Commission (NRC) has approved the requested exemption from specific requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Appendix E, “Emergency Planning and Preparedness for Production and Utilization Facilities,” Section IV.F., “Training,” for the Cooper Nuclear Station (Cooper). This action is in response to your application dated June 16, 2020 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML20191A276), related to an NRC letter dated May 14, 2020 (ADAMS Accession No. ML20120A003), describing a process by which the NRC is prepared to grant temporary exemptions from the biennial emergency preparedness (EP) exercise requirement.

Specifically, your application requested a temporary exemption from the requirements of 10 CFR Part 50, Appendix E, Sections IV.F.2.b and IV.F.2.c, regarding the conduct of the biennial EP exercise.

On January 31, 2020, the U.S. Department of Health and Human Services declared a public health emergency for the United States to aid the nation’s healthcare community in responding to the Coronavirus Disease 2019 (COVID-19). Subsequently, the Centers for Disease Control and Prevention (CDC) issued recommendations (e.g., social distancing, limiting assemblies) in an attempt to limit the spread of COVID-19.¹ In addition, you stated that the State of Nebraska has issued Directed Health Measures.² You further stated in the exemption request that, in response to these declarations, on March 23, 2020, Nebraska Public Power District (NPPD or the licensee) initiated the Cooper site pandemic plan, which includes health measures such as social distancing, group size limitations, and self-quarantine.

¹ CDC, “How to Protect Yourself and Others,” April 18, 2020 (ADAMS Accession No. ML20125A069)

² Nebraska Department of Health and Human Services, “COVID-19 Directed Health Measures (DHM).”

Under 10 CFR 50.12, the NRC may grant exemptions from the requirements of 10 CFR Part 50, which are authorized by law, will not present an undue risk to the public health and safety, are consistent with the common defense and security, and when special circumstances are present. Special circumstances are present whenever, among other things, application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule or the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. Granting an exemption from NRC regulations does not impact NRC findings of reasonable assurance. In the statement of considerations (SOC) for the final rule that established 10 CFR 50.12 (Specific Exemptions; Clarification of Standards, Final Rule, 50 FR 50764, dated December 12, 1985), the Commission explained that:

While compliance with all NRC regulations provides reasonable assurance of adequate protection of the public health and safety, the converse is not correct, that failure to comply with one regulation or another is an indication of the absence of adequate protection, at least in a situation where the Commission has reviewed the noncompliance and found that it does not pose an "undue risk" to the public health and safety. Furthermore, the Commission has never defined the concept of "defense-in-depth" to preclude the granting of an exemption from a regulation as long as the applicable exemption criteria are met. In fact, the Commission has recognized that its regulations may provide for the possibility of exemptions when an appropriately high level of safety is in fact achieved and the public interest is served.

Further, the SOC states that "the Commission believes that the effect of an exemption on total facility safety is appropriate for consideration as a special circumstance."

The requirements in 10 CFR Part 50, Appendix E, Section IV.F.2.b state, in part:

Each licensee at each site shall conduct a subsequent exercise of its onsite emergency plan every 2 years. ... The exercise may be included in the full participation biennial exercise required by paragraph 2.c. of this section.

The requirements in 10 CFR Part 50, Appendix E, Section IV.F.2.c state, in part:

Offsite plans for each site shall be exercised biennially with full participation by each offsite authority having a role under the radiological response plan.

In Appendix E to 10 CFR Part 50, the NRC defines the term "full participation," when used in conjunction with EP exercises for a particular site, to mean appropriate offsite local and State authorities and licensee personnel physically and actively take part in testing their integrated capability to adequately assess and respond to an accident at a commercial nuclear power plant. Full participation includes testing major observable portions of the onsite and offsite emergency plans and mobilization of State, local and licensee personnel and other resources in sufficient numbers to verify the capability to respond to the accident scenario.

The underlying purpose of 10 CFR Part 50, Appendix E, Sections IV.F.2.b and IV.F.2.c is to ensure that emergency response organization personnel are familiar with their duties, to test the adequacy of emergency plans, and to identify and correct weaknesses. Further, the underlying purpose of Section IV.F.2.c is also to test and maintain interfaces among affected State and local authorities, and the licensee.

The requested temporary exemption from the biennial EP exercise requirement would ensure that the licensee engages in activities that do not conflict with practices recommended by the CDC and the State of Nebraska to limit the spread of COVID-19.³ Biennial exercises, particularly those that integrate onsite and offsite performance, typically require the physical presence of numerous individuals in close-quarters with one another, which is inconsistent with the CDC and the State of Nebraska recommendation of social distancing. Additionally, the State of Nebraska would not be able to participate in the scheduled May 5-6 biennial exercise, as they determined that conduct of this exercise may pose undue risk to public health and safety, specifically, their staff, State and local partners and Federal evaluators.

In the application, you provided that the Calendar Year (CY) 2020 exercise requirement cannot be met because the threat of COVID-19 spread has resulted in the inability to safely conduct the full-participation biennial emergency exercise. The compensatory measures that you stated that you will implement during the exemption term are as follows:

- Per Regulatory Issue Summary (RIS) 2006-03, "Guidance on Requesting an Exemption from Biennial Emergency Preparedness Exercise Requirements," and consistent with similar exemptions granted for issues like hurricanes that have impacted exercise scheduling, schedule an exercise within the 35-month window. This exercise will be coordinated with offsite response organizations, as appropriate.
- Future exercises will continue to be held in even years.
- Continue to conduct drills, exercises, and other training activities that exercise emergency response strategies. The State and local authorities are expected to participate in a December 2020 drill.

You also provided that the last biennial EP exercise was conducted on July 31, 2018. The 35-month window for scheduling the next exercise ends on June 30, 2021. Accordingly, the requested exemption would expire on June 30, 2021, thus extending the due date to conduct the CY 2020 biennial EP exercise to June 30, 2021. In your application you stated that the biennial EP exercise has been tentatively scheduled for May 25-26, 2021, which falls before this expiration date.

Since the last biennial EP exercise, NPPD has conducted numerous drills, exercises, and other training activities that have exercised its emergency response strategies. State officials participated in the following:

- December 2018 – Limited State and local participation;
- February 2019 – Limited State and local participation;
- May 2019 – Full State and local participation; and
- February 2020 – Full State and local participation.

NPPD made a reasonable effort to reschedule the biennial EP exercise during CY 2020 but was unsuccessful. On April 22, 2020, a meeting was held with the Nebraska Emergency Management Agency, Nebraska Department of Health and Human Services, Iowa Department

³ CDC, "How to Protect Yourself and Others," April 18, 2020 (ADAMS Accession No. ML20125A069); Nebraska Department of Health and Human Services, "COVID-19 Protect Yourself and Others."

of Homeland Security and Emergency Management, Missouri Department of Health, Missouri State Emergency Management Agency, Federal Emergency Management Agency (FEMA) Region VII, NRC Region IV, and local counties to discuss rescheduling the May 5-6, 2020, biennial EP exercise. A tentative date of May 25-26, 2021, was agreed upon as it was not feasible to schedule the exercise in the fall of 2020 due to the limited availability of FEMA and NRC, and conflicts, such as a refueling outage and other NRC inspections.

The NRC staff has reviewed the requested exemption and determined that it is permissible under the Atomic Energy Act of 1954, as amended, and that no other prohibition of law exists to preclude the activities that would be authorized by the exemption. Therefore, the NRC staff finds that the requested exemption is authorized by law.

The NRC staff has reviewed the requested exemption and determined that it would not adversely affect the emergency response capability of the facility because all members are currently qualified for all tasks and the proposed compensatory measures will maintain their knowledge, skills, and abilities without the conduct of the biennial EP exercise during the exemption term. The requested exemption would also allow the affected licensee staff to continue to be available to perform their functions during the COVID-19 public health emergency. Therefore, the NRC staff finds that the requested exemption will not present an undue risk to the public health and safety and is consistent with the common defense and security.

The NRC staff has reviewed the requested exemption and determined that it would provide only temporary relief from the applicable regulation and that the licensee has made good faith efforts to comply with the regulation. Also, based on the licensee continuing to conduct drills, exercises, and other training activities that exercise its emergency response strategies, including a December 2020 drill with State and local officials, the fact that the CY 2020 biennial EP exercise is being postponed, not canceled, and the fact that the future biennial exercises will continue to be held in even years, the NRC staff determined that application of the regulation in these circumstances is not necessary to achieve the underlying purpose of the rule. Therefore, the NRC staff finds that special circumstances are present.

NRC approval of the requested exemption is categorically excluded under 10 CFR 51.22(c)(25) and there are no 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 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 involves no significant hazards consideration because it does not authorize any physical changes to the facility or any of its safety systems, change any of the assumptions or limits used in the facility licensee's safety analyses, or introduce any new failure modes. There is 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." There is 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. There is no significant construction impact because this exemption does not involve any changes to a construction permit. There is no significant increase in the potential for or consequences from radiological accidents because the exemption does not alter any of the assumptions or limits in the 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. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the approval of the requested exemption.

Based on the above, the NRC has determined that 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 and that special circumstances are present. Therefore, the NRC hereby grants the exemption.

This exemption expires on June 30, 2021.

If you have any questions, please contact the Cooper project manager, Thomas J. Wengert, at 301-415-4037 or via e-mail at Thomas.Wengert@nrc.gov.

Sincerely,

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

Docket No. 50-298

cc: Listserv

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*by e-mail

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