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October 30, 1986
PY-CEI/NRR-0550 L

MURRAY R. EDELMAN
SR. VICE PRESIDENT
NUCLEAR

Mr. Harold R. Denton, Director
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Perry Nuclear Power Plant
Docket Nos. 50-440; 50-441
Request for Exemption to
10CFR50, Appendix E

Dear Mr. Denton:

The purpose of this letter is to request an exemption from Section IV.F.1 of Appendix E to 10 CFR, Part 50. Section IV.F.1 requires that a full participation emergency preparedness exercise for the Perry Nuclear Power Plant (PNPP) be conducted within one year before issuance of a full power operating license for PNPP, Unit 1 and prior to operation of the reactor above 5% of rated power.

A full participation emergency preparedness exercise was conducted on November 28, 1984, a small scale exercise on November 20, 1985, and what the NRC has stated to be a full participation exercise in the context of the NRC rule on April 15, 1986. The conclusion of the April 30, 1986 NRC report stated the 1986 exercise was a full participation exercise. FEMA, in its September 5, 1986 report, stated that the State participation was to a degree only partial. CEI requests this exemption to ensure the prompt resolution of this issue and to allow full power licensing to proceed without undue delays and the resultant cost to the ratepayer and/or the stockholder.

CEI requests this exemption pursuant to 10CFR50.12(a) as discussed in the attachment to this letter. Please feel free to contact me if you have any questions.

Very truly yours,

Murray R. Edelman
Senior Vice President
Nuclear Group

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Attachment

cc: Jay Silberg, Esq.
P. Leech (2)
K. Connaughton

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PERRY NUCLEAR POWER PLANT (PNPP)
JUSTIFICATION FOR EXEMPTION FROM 10CFR50 APPENDIX E,
SECTION IV.F.1

The NRC may grant exemptions from Part 50 requirements which, pursuant to 10CFR50.12(a) are (1) "authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security," and (2) present special circumstances. Section 50.12(a)(2) identifies six categories of special circumstances; three of these categories ((ii), (iii), and (v)), are applicable to the PNPP exemption request; each of which is discussed below. Compliance with Section 50.12(a)(1) is achieved by maintaining an acceptable level of emergency preparedness as discussed under exemption criterion (ii). Therefore, this exemption will not present an undue risk to public health and safety, and is consistent with the common defense and security.

Exemption Criterion (ii). 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.

The "underlying purpose" of the Appendix E Section IV.F.1 schedule requirement is presumably to ensure that emergency response capability is adequate at the time of the full-power licensing. As adopted in 1980, Section IV.F.1 required a full-scale exercise "within one year before the issuance of the operating license for full power." At that time, the NRC also required each state and local government in the plume exposure pathway Emergency Planning Zone (EPZ) to participate in a least one full-scale exercise each year following licensing.

In 1980 the NRC considered it necessary to conduct annual full-participation exercises to maintain emergency planning capability; however, in 1984 the NRC changed the annual exercise requirement for offsite emergency response (Section IV.F.3(b)) to once every two years on the basis of both the high level of readiness and disproportionate expenditure of resources used to support annual exercises as demonstrated in over 150 exercises. The Commission stated:

Because emergency response personnel at the State and local government level continuously respond to actual emergencies, the Commission does not consider that relaxing the frequency of State and local government participation in emergency preparedness exercises would adversely affect the health and safety of the public.

Appendix E Section IV.F.1 states, " A full participation exercise which tests as much of the licensee, State and local emergency plans as is reasonably achievable without mandatory public participation shall be conducted for each site at which a power reactor is located for which the first operating license for that site is issued after July 13, 1982. This exercise shall be conducted within one year before the issuance of the first operating license for full power and prior to operation above 5% of rated power of the first reactor, and shall include participation by each State and local government within the plume exposure pathway EPZ and each State within the ingestion exposure pathway EPZ."

"Full participation" is further defined in footnote 4. "Full participation" when used in conjunction with emergency preparedness exercises for a particular site means 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 the 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."

A full participation exercise which literally meets the regulatory definition occurred on November 28, 1984. Another such exercise occurred on April 15, 1986. In its report dated April 30, 1986, Report No. 50-440/86009 (DRSS); 50-441/86003 (DRSS), the NRC characterized the April 1986 exercise as "a full participation exercise for these counties and the State of Ohio." However, FEMA's report dated September 5, 1986 characterized this exercise as "a joint, full participation exercise for the Ashtabula, Geauga, and Lake Counties of Ohio. This was a partial participation exercise for the State of Ohio."

According to FEMA's report, the State of Ohio demonstrated its ability in the following areas:

- o Activation and Staffing
- o Emergency Operations Management
- o Facilities
- o Communications
- o Dose Assessment and Protective Recommendations
- o Public Alerting and Instructions
- o Protective Actions
- o Radiological Exposure Control
- o Media Relations
- o Field Monitoring

FEMA's report characterized the State of Ohio's participation as partial. It stated:

The State Emergency Operations Center (EOC) at Worthington, Ohio has been evaluated during numerous previous radiological emergency preparedness exercises. This was a partial participation exercise for the State. The EOC staff consisted of representatives from the Ohio Departments of Health and Agriculture, the Ohio Environmental Protection Agency (OEPA), and the Ohio Disaster Services Agency (ODSA). Additional State staff were prepositioned for the exercise at the County EOCs, EOF, JPIC, and at predesignated staging areas for the communications van and field monitoring team.

The State of Ohio objectives included 18 of the 35 exercise objectives listed in Table "M" of the "Modular Format for Uniformity of Radiological Emergency Preparedness Observations and Evaluations," dated June 1983. Thus, the exercise was much greater in scope than a "partial participation" exercise, which is limited to exercising "direction and control functions" and "communication capabilities." During the exercise, the State fully demonstrated all but one of the 18 objectives. Additionally, the State of Ohio has previously demonstrated (either in the November 1984 or the April 1986 exercise) all but 4 of the 35 objectives.

The results of the April 15, 1986 exercise, as documented in both the FEMA and NRC reports, clearly show the capability of the emergency response organizations of the State of Ohio, Lake, Ashtabula and Geauga Counties, and CEI.

FEMA's assessment of the April 1986 exercise as a partial participation exercise does not change these results. Therefore, the underlying purpose of the rule has been met by the conduct of both the November 1984 and April 1986 exercises.

Exemption Criterion (iii). Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.

The NRC did not appear to contemplate that more than one full participation exercise might actually have to be conducted for a given reactor prior to full-power licensing when it adopted Section IV.F.1 of Appendix E. The first full participation exercise at PNPP, which included the State, was held in November 1984 and was deemed highly successful. When full power licensing of PNPP was deferred until late 1985 an exemption request was filed to enable the facility to utilize that successful full-scale exercise to fulfill the requirements of this regulation. When the April 1986 full participation exercise was held and the plant was still not fully licensed the previous exemption request was no longer pursued since that 1986 exercise was believed to fulfill the requirement of 10CFR50 Appendix E Section IV.F.1. Therefore, PNPP has to date actually conducted two full-scale exercises prior to receipt of the full-power operating license, as explained above. If a determination is made that the most recent full-scale exercise actually involved only

"partial" State participation, and this exemption request is not granted, Section IV.F.1 would require that another full participation exercise be held prior to PNPP's exceeding 5 percent of rated thermal power. This would result in the following undue hardships and costs:

1. State and Local Agencies

The next scheduled exercise for the PNPP is in May 1987, which, in accordance with the requirements of 10CFR50 Appendix E Section IV.F.2 and IV.F.3, is scheduled as an onsite exercise with participation by the State and Counties limited to communications interfaces. The next scheduled exercise for PNPP with full participation at the State and County level is in May 1988. Within the last two years the State has been involved in full participation exercises in November 1984 and July 1985, with another full participation exercise scheduled for November 19, 1986. In addition, the State is presently involved in planning for exercises in March and April of 1987. Scheduling of another full-scale exercise at PNPP in May 1987 or earlier would place an unnecessary and severe strain on State resources. A similar burden would be placed on the local Counties since they have not budgeted for full-scale participation in an exercise at PNPP within the upcoming year.

2. Onsite

If this exemption is not granted and the PNPP therefore is required to conduct another full participation exercise prior to exceeding 5 percent power, the earliest possible opportunity would be to change the designation of the May 1987 exercise to a full participation exercise. This would require an unnecessary expenditure of resources above and beyond those required to conduct a small scale annual emergency plan exercise, since all State agencies involved in direct interactions with the site organization participated in the April 1986 exercise, and since substantial additional resources would be required to interface with State and local County officials in the preparation for and execution of a full participation exercise.

In addition, substantial economic injury to the Licensee, their customers and stockholders would result as detailed in the September 2, 1986 affidavit of Murray R. Edelman attached to the "Licensees' Response To OCRE Motion For Continuance." That affidavit notes that the cost for every day that operation above 5 percent power of Unit 1 is delayed will total about 2.2 million dollars without even considering the higher fuel costs for replacement power. The PNPP is expected to be ready to exceed 5 percent power by November 16, 1986 and assuming the May 13, 1987 exercise could be expanded to a full participation exercise, this would result in nearly three months of accrued costs at this 2.2 million dollar per day total.

Exemption Criterion (v). The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with this regulation.

The exemption requests would provide relief from a one-time requirement. Since PNPP currently expects to be prepared to exceed 5 percent power by November 16, 1986, the November 1984 exercise falls outside the rule's schedule. The April 1986 exercise however, is within the rule's scheduled time frame.

PNPP has made a good faith effort to comply with the rule. When it became obvious in 1985 that the November 1984 exercise might be outside the time limits of the rule, PNPP requested an exemption (PY-CEI/NRR-0372 L, October 17, 1985). Additional information supporting the exemption request was provided on December 6, 1985 (PY-CEI/NRR-0410 L). It was made clear in both filings that PNPP expected the April 1986 exercise to be a full scale exercise. Subsequent to the filings, the scope and objectives for the April 1986 exercise were provided to both the NRC and FEMA. This described exactly what would and would not be demonstrated during the exercise. Concurrence on all objectives was obtained from both the NRC and FEMA prior to conducting the exercise. The NRC inspection report of April 30, 1986 characterized the exercise as a "full participation exercise" meeting the intention of the rule, and the pending exemption request was no longer pursued. Until October 29, 1986, PNPP believed the NRC accepted the April 1986 exercise as a full participation exercise.