

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the matter of  
NEBRASKA PUBLIC POWER DISTRICT  
(Cooper Nuclear Station)

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Docket No. 50-298

EXEMPTION

I.

Nebraska Public Power District (the licensee) is the holder of Facility Operating License No. DPR-46 that authorizes operation of the Cooper Nuclear Station (the facility) at a steady state reactor power level not in excess of 2381 megawatts thermal. The facility is a boiling water reactor (BWR) located at the licensee's site in Nemaha County, Nebraska. The license provides, among other things, that the facility is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

II.

Section 50.54(w)(1) of 10 CFR Part 50 was recently amended to require that the licensees of nuclear power reactors maintain a minimum insurance coverage for operating nuclear power plants in the sum of \$1.06 billion. The new requirements became effective on October 5, 1987 and the regulations provide for a 60 day grace period in which a licensee could comply with the requirements.

By letter dated October 2, 1987, the licensee, by its attorney, requested a schedular exemption from the requirements of amended 10 CFR 50.54(w) until a satisfactory final order from a state or Federal court has been obtained and the licensee is able to obtain the necessary insurance policies from Nuclear Electric Insurance Limited (NEIL). Currently, the licensee maintains \$585 million of property insurance obtained through American Nuclear Insurers and the Mutual Atomic Energy Reinsurance Pool. The only source of additional insurance to comply with the Commission's new regulations is NEIL. However, NEIL is a mutual company and under the provisions of the Nebraska Constitution, as interpreted by the Nebraska Supreme Court, there is considerable doubt as to whether the licensee may lawfully purchase insurance from NEIL. In an effort to satisfy the limitations of Nebraska law, effective on March 29, 1985, NEIL amended its charter and by-laws, together with a proposal to issue appropriate policy endorsements. Based upon NEIL's actions, the licensee submitted an application to NEIL for decontamination and property insurance. By letter from NEIL dated June 28, 1985, the licensee was advised NEIL would not issue a policy to the licensee until the licensee had secured a declaratory judgment from the Nebraska Supreme Court that non-voting membership in NEIL and the issuance of policies with appropriate endorsements would not violate the Nebraska Constitution. On July 1, 1985, the licensee, jointly with the Omaha Public Power District (the Districts), commenced an action for a declaratory judgment in the District Court of Lancaster County, Nebraska. The District Court issued its decision on December 1, 1986 in which it declined to grant a declaratory judgment. The Districts have appealed the ruling of the District Court to the Nebraska Supreme Court where the matter currently is pending. In

the event the Nebraska Supreme Court ultimately refuses to grant a declaratory judgment that the Districts may, consistent with Nebraska law, purchase insurance from NEIL, the Districts assert they plan to commence an action for a declaratory judgment in the United States District Court in Nebraska and ask the Federal court to declare that the Commission's new regulations preempt any provisions of the Nebraska Constitution.

### III.

The NRC staff has reviewed the licensee's request for a schedular exemption from the amended requirements of 10 CFR 50.54(w)(1). The licensee has asserted, and the Commission has found, 52 FR 28966, that it is unable to provide equivalent protection in lieu of purchasing the NEIL coverage. NEIL coverage cannot be secured until a satisfactory final order from either a state or Federal court is obtained. For these reasons, the staff finds that the licensee has shown good cause for the requested schedular exemption from the requirements of amended 10 CFR 50.54(w)(1). However, the staff does not believe the exemption should be for an indefinite period. Accordingly, the requested schedular exemption is acceptable for a period of one year from December 5, 1987. If an appropriate state or Federal court order has not been obtained by such date, the staff would give consideration to a new application for an exemption.

### IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this 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. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(v), are justifying the exemption.

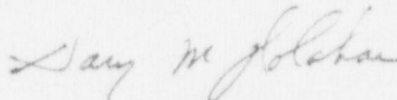
The licensee has been making, and continues to make, a good faith effort to secure the necessary state or Federal court order. Upon securing the necessary court order, the licensee intends to purchase the insurance policy from NEIL which would put it in compliance with the new requirements of 10 CFR 50.54 (w)(1).

Accordingly, the Commission hereby grants an exemption, as described in Section III above, from Section 50.54(w)(1) of 10 CFR Part 50 to extend the date for acquiring the full amount of property insurance required by the Commission's regulations to no later than one year from December 5, 1987.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (52 FR 45881).

This exemption is effective upon issuance.

FOR THE NUCLEAR REGULATORY COMMISSION



Gary Holahan, Acting Director  
Division of Reactor Projects - III,  
IV, V and Special Projects  
Office of Nuclear Reactor Regulation

Dated at Bethesda, Maryland  
this December 2, 1987