



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

September 11, 2020

Mr. Frank R. Payne  
Site Vice President  
Energy Harbor Nuclear Corp.  
Perry Nuclear Power Plant  
P.O. Box 97, SB306  
Perry, OH 44081-0097

SUBJECT: PERRY NUCLEAR POWER PLANT, UNIT NO. 1 – 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-0125 [COVID-19])

Dear Mr. Payne:

The U.S. Nuclear Regulatory Commission (NRC or Commission) 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 Perry Nuclear Power Plant, Unit No. 1 (PNPP). This action is in response to an application dated August 3, 2020 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML20216A258), 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, the application requested a temporary exemption from the requirements of 10 CFR Part 50, Appendix E, Section IV.F.2.c, regarding the performance of the Calendar Year (CY) 2020 EP exercise for responsible offsite response organizations (OROs).

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.<sup>1</sup> In addition, you stated in the exemption request that the State of Ohio issued Directed Health Measures.<sup>2</sup> You further stated that, in response to these declarations, and in accordance with the corporate pandemic plan, Energy Harbor Nuclear Corp. (EHNC, or the licensee) postponed some site activities due to isolation activities (e.g., social distancing, group size limitations, self-quarantining).

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

<sup>2</sup> Ohio Department of Health, “Public Health Orders,” <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/resources/public-health-orders/public-health-orders>.

Upon review of the application, the NRC staff determined that you did not qualify for the expedited review process detailed in the May 14 letter because that letter did not apply to this type of exemption request. Further, while this type of exemption request is covered by the Addendum to the May 14, 2020, letter, dated September 2, 2020 (ADAMS Accession No. ML20223A152), the NRC received the request before issuing that letter. Consequently, the NRC staff reviewed this exemption request in accordance with its normal acceptance review process.

In the application, you stated that on July 28, 2020, EHNC conducted a teleconference with representatives from the OROs, including the Counties of Lake, Geauga, and Ashtabula, and the State of Ohio. During this teleconference, the parties expressed concerns with supporting the biennial exercise and maintaining protection of offsite staff during the current COVID-19 pandemic response. The parties agreed that it was not feasible to schedule the exercise in CY 2021 due to uncertainty of COVID-19 isolation actions, the needed response to the pandemic, and conflicts with other NRC inspections. As such, EHNC asserted that it had made a reasonable effort to reschedule the exercise but was unsuccessful due to the on-going COVID-19 pandemic response.

In the application, EHNC provided letters from the following OROs:

- Director, Lake County Emergency Management Agency (Enclosure B),
- Director, Geauga County Department of Emergency Services (Enclosure C),
- Director, Ashtabula County Emergency Management Agency (Enclosure D), and
- Radiological Branch Chief, Ohio Emergency Management Agency (Enclosure E).

These letters and EHNC's technical justification reflect that the OROs: (1) agree with the licensee's exemption request and are committed to maintaining their radiological emergency plans; and (2) will continue to support emergency response activities for actual nuclear power plant radiological emergencies.

The requested one-time exemption from the biennial EP exercise requirement would ensure that the OROs engage in activities that do not conflict with practices recommended by the CDC and the State of Ohio to limit the spread of COVID-19. Biennial exercises typically require the physical presence of numerous individuals in close-quarters with one another, which is inconsistent with the CDC and the State of Ohio recommendations regarding social distancing. Additionally, Lake County (the county in which PNPP is located), Geauga and Ashtabula Counties, and the State of Ohio have communicated to EHNC their concerns with supporting the biennial exercise and maintaining protection for offsite staff during the current COVID-19 pandemic response. Based on these concerns, the needed response to the pandemic, and the uncertainty of the future of the pandemic, the relevant counties, the State of Ohio, and EHNC determined that seeking a one-time exemption was the most appropriate course of action.

In the application, you provided that the 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 EP exercise. You also indicated that:

- The current biennial EP exercise at PNPP, scheduled for September 15, 2020. EHNC states that the next biennial exercise, expected to occur in September 2022, will be coordinated with the applicable OROs, the applicable NRC region, and the applicable Federal Emergency Management Agency (FEMA) region.

- Since the last PNPP biennial EP exercise on September 18, 2018, PNPP has conducted drills, exercises, and other training activities that exercised its emergency response strategies in coordination with OROs. These included exercises on May 15, 2019, and November 21, 2019.

The NRC staff reviewed the results of the following to assess the effectiveness of licensee interactions with OROs and whether the OROs are adequately prepared to respond to a radiological emergency at the PNPP site:

- FEMA's After Action Report (AAR) / Improvement Plan for the September 18, 2018 Biennial EP Exercise (ADAMS Accession No. ML18354A877), which evaluated the last full-participation, biennial exercise and identified no Level 1 findings (deficiencies).
- NRC's PNPP Baseline Emergency Preparedness Biennial Exercise Inspection Report 05000440/2018503 dated October 11, 2018 (ADAMS Accession No. ML18285A035), which documented the results of an NRC Emergency Preparedness inspection completed September 20, 2018 and identified no findings or violations of more-than-minor significance.
- NRC's PNPP Integrated Inspection Report 05000440/2019002, dated July 26, 2019 (ADAMS Accession No. ML19210D576), which evaluated an emergency response organization drill on May 15, 2019, and did not identify any finding or violation of more than minor significance.
- NRC's PNPP Integrated Inspection Report 05000440/2019004, dated January 29, 2020 (ADAMS Accession No. ML20030A575), which documented an NRC inspection completed on December 31, 2019 and found no findings or violations of more than minor significance. Specifically, inspectors reviewed the maintenance of the emergency preparedness program under Inspection Procedure 71114.05, "Maintenance of Emergency Preparedness," including the Fleet Oversight Audit Report of Emergency Preparedness dated December 7, 2018.

Under 10 CFR 50.12, the NRC may grant exemptions from the requirements of 10 CFR Part 50 that are 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 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 *Federal Register* 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.”

Section IV.F.2.a of Appendix E to 10 CFR Part 50 provides that a full participation exercise that tests as much of the licensee, State, and local emergency plans as is reasonably achievable shall be conducted for each site at which a power reactor is located. Section IV.F.2.b of Appendix E to 10 CFR Part 50 requires each licensee at each site to conduct an exercise of its onsite emergency plan every 2 years; this exercise may be included in the full participation biennial exercise required by Section IV.F.2.c. Section IV.F.2.c requires offsite plans for each site to be exercised biennially with full participation by each offsite authority having a role under the plan. In other words, the onsite exercise required by Section IV.F.2.b is not required to be performed in conjunction with the offsite exercise required by Section IV.F.2.c.

The underlying purpose of 10 CFR Part 50, Appendix E, 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 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 emergency response organization members are currently qualified for all tasks. Additionally, the proposed conduct of drills with the OROs in CY 2021 will maintain their knowledge, skills, and abilities without the conduct of the biennial emergency preparedness exercise during the exemption term. The requested exemption would also allow the affected ORO staff to continue to be available to perform their functions during the COVID-19 PHE. 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 drills scheduled in CY 2021 to exercise the OROs to ensure continued familiarity with duties and ability to respond during an emergency at PNPP, and the fact that the CY 2020 biennial EP exercise is being conducted (though without ORO full participation), 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 temporary 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 December 31, 2022, or when the offsite participation biennial exercise required per 10 CFR Part 50, Appendix E, Section IV.F.2.c, is performed in CY 2022, whichever occurs first.

If you have any questions, please contact the PNPP project manager, Scott P. Wall, at 301-415-2855 or via e-mail at [Scott.Wall@nrc.gov](mailto:Scott.Wall@nrc.gov).

Sincerely

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

Docket No. 50-440

cc: Listserv

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