



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

October 26, 2020

Mr. G. T. Powell
President and Chief Executive Officer
STP Nuclear Operating Company
P.O. Box 289
Wadsworth, TX 77483

SUBJECT: SOUTH TEXAS PROJECT, UNITS 1 AND 2 – TEMPORARY EXEMPTION FROM CERTAIN REQUIREMENTS OF 10 CFR PART 50, APPENDIX E, “EMERGENCY PLANNING AND PREPAREDNESS FOR PRODUCTION AND UTILIZATION FACILITIES,” SECTIONS IV.F.2.B AND IV.F.2.C (EPID L-2020-LLE-0133 [COVID 19])

Dear Mr. Powell:

The U.S. Nuclear Regulatory Commission (NRC, the 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,” Sections IV.F.2.b and IV.F.2.c, for South Texas Project (STP) Units 1 and 2. This action is in response to your application dated August 11, 2020, as supplemented by a letter dated September 10, 2020 (Agencywide Documents Access and Management System Accession Nos. ML20224A211 and ML20254A217, respectively), that requested a one-time schedular exemption to postpone the full participation biennial emergency preparedness (EP) exercise until calendar year (CY) 2021.

STP Nuclear Operating Company (STPNOC, the licensee) holds Renewed Facility Operating License Nos. NPF-76 and NPF-80, which authorizes operation of STP Units 1 and 2, respectively). These licenses are subject to the rules, regulations, and orders of the NRC.

The facility consists of two pressurized-water reactors located in Matagorda County, Texas. By letter dated August 11, 2020, as supplemented by letter dated September 10, 2020, STPNOC submitted a request for temporary exemption from Appendix E to 10 CFR Part 50, Sections IV.F.2.b and IV.F.2.c, regarding the performance of its biennial EP exercise.

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. While desirable, full participation exercises are not required (i.e., exercises required by 10 CFR Part 50, Appendix E, Sections IV.F.2.b and IV.F.2.c are not required to be performed simultaneously).

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). 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 your application dated August 11, 2020, as supplemented by letter dated September 10, 2020, you provided the following information:

- STPNOC has been unable to find a date that would factor in a possible reduction of the impact of the PHE on the conduct of the CY 2020 exercise as scheduled, but still take place in CY 2020. STPNOC and the pertinent offsite response organizations (OROs) have determined that the PHE conditions will not drastically improve by the end of CY 2020 from the currently scheduled exercise.
- The threat of COVID-19 spread has resulted in the inability to safely conduct the biennial EP exercise that was scheduled for October 28, 2020, due to implementation of isolation activities (e.g., social distancing, group size limitations, self-quarantining, etc.). In addition, the State of Texas and Matagorda County informed the licensee that the current COVID-19 pandemic response has impacted their ability to prepare for the scheduled exercise and that they would be challenged to participate in the exercise as currently scheduled. Matagorda County and the State of Texas will maintain their current emergency plans and remain able to respond to an emergency. The exemption would not hinder the ability of STPNOC, Matagorda County, and the State of Texas to respond should an actual emergency occur.
- This one-time schedular exemption to allow for the conduct of the biennial EP exercise in CY 2021 supports continued implementation of the isolation activities (e.g., social distancing, group size limitations, self-quarantining, etc.) to protect required emergency response organization (ERO) and ORO personnel in response to the COVID-19 PHE.
- The last biennial EP exercise was conducted on June 12, 2018. Since that time, the licensee has conducted numerous drills, exercises, and other training activities that have exercised its emergency response strategies and demonstrated proficiency. State (and local, where noted) officials participated in the following:
 - Limited State and local participation, August 2018;
 - Full State and local participation, March 2019;

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

- Limited State and local participation, April 2019;
 - Limited State and local participation, June 2019;
 - Full State participation, August 2019;
 - Limited State and local participation, September 2019;
 - Limited State and local participation, March 2020, and
 - Limited State and local participation, July 2020.
- The licensee will continue to conduct tabletops, workshops, and other training activities that exercise its emergency response strategies and demonstrate proficiency. The State and local authorities will maintain their current emergency plans and remain able to respond to an emergency during the pandemic. The exemption would not hinder the ability to respond should an actual emergency occur.
 - The licensee made a reasonable effort to reschedule the biennial EP exercise during 2020 but was unsuccessful. Due to limited availability of Federal Emergency Management Agency (FEMA) and NRC participants, the uncertainty of COVID-19 isolation actions, and scheduling conflicts (e.g., spring 2021 refueling outage, NRC inspections, World Association of Nuclear Operators (WANO) evaluated combined functional drill), it is not feasible to reschedule in winter 2020 or spring 2021.
 - The date of the rescheduled biennial EP exercise is greater than 35 months from the month of the previously evaluated biennial EP exercise conducted on June 12, 2018. STPNOC states that if this exemption is granted, the planned graded exercise inspection will be replaced by a baseline inspection of STP's EP Program. Since the last graded exercise, the staff has confirmed that the licensee's EP Program is adequately prepared by inspecting the EP program using various selected elements of the reactor oversight program EP inspection procedures. The NRC staff will also continue its EP baseline inspections. This exemption would defer the CY 2020 biennial EP exercise to CY 2021. Future biennial EP exercises would continue to be held in even-numbered years.

Pursuant to 10 CFR 50.12, "Specific exemptions," the NRC may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions 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 (2) special circumstances are present.

The NRC staff determined that the requested exemption 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 regulations in 10 CFR Part 50, Appendix E, Section IV.F.2.b and Section IV.F.2.c concern requirements for licensees to conduct biennial EP exercises at their facilities. No new accident precursors are created by allowing the licensee to postpone the biennial EP exercise from CY 2020 until CY 2021. Thus, the probability and consequences of postulated accidents are not increased. In addition, the requested exemption for a one-time change to the biennial EP exercise schedule has no relation to security issues. 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.

Special circumstances, per 10 CFR 50.12, that apply to the requested exemption include:

- a. 10 CFR 50.12(a)(2)(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 regulation in 10 CFR Part 50, Appendix E, Section IV.F.2.b requires licensees to conduct an exercise of their site emergency plan biennially. Further, the regulation in 10 CFR Part 50, Appendix E, 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. The underlying purpose of these requirements is to ensure that the emergency organization personnel are familiar with their duties and to identify and correct any weaknesses that may exist in the licensee’s EP Program. 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 licensee stated that it has conducted training drills exercising the principal functional areas of emergency response since the last evaluated biennial EP exercise and has activated onsite emergency response facilities during those drills with State and local participation. Based on the above, the NRC staff finds that the underlying purposes of these regulations are met by the licensee having conducted these preparedness activities and establishing an acceptable tentative date for the rescheduled biennial EP exercise in July 2021.

- b. 10 CFR 50.12(a)(2)(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 the regulation.”

STPNOC has determined that the originally scheduled exercise date does not support continued implementation of the isolation activities (e.g., social distancing, group size limitations, self-quarantining, etc.) to protect required ERO personnel in response to the ongoing COVID-19 PHE. These activities are needed to ensure that ERO personnel are isolated from COVID-19 and remain capable of executing the functions of the ERO, as described in the STP Emergency Plan. A tentative date in July 2021 has been proposed.

The State of Texas informed the licensee that the continuing uncertainty of the COVID-19 pandemic presents challenges to the Radiological Emergency Preparedness Program evaluated exercise scheduled for October 28, 2020 and they support the STPNOC request to reschedule the exercise in 2021. During discussions among the licensee, State and local officials, and the NRC and FEMA Regions, the State of Texas and Matagorda County, a nominal date in July 2021 has been discussed with all interested parties.

FEMA has been informed of STPNOC’s request for a one-time schedular exemption to postpone the full participation biennial emergency preparedness exercise until CY 2021. FEMA is concurrently evaluating a separate relief request from the State of Texas.

Therefore, the NRC staff finds that the requested exemption to conduct the biennial EP exercise in CY 2021 instead of CY 2020 would provide only temporary relief from

the applicable regulation and that the licensee has made good faith efforts to comply with the regulation.

Based on the above, the NRC staff finds that the special circumstances of 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(v) 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 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 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.

Granting the requested exemption does not impact NRC findings of reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at STP. In the statement of considerations for the standards to be applied when considering whether to grant exemptions ("Specific Exemptions; Clarification of Standards, Final Rule," 50 FR 50764, dated December 12, 1985), the Commission stated:

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.

The NRC staff has determined that in accordance with 10 CFR 50.12, 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 licensee's request for a one-time schedular exemption from the requirements for the biennial EP exercise in 10 CFR Part 50, Appendix E, Sections IV.F.2.b and IV.F.2.c.

This exemption expires on December 31, 2021.

If you have any questions, please contact the NRR project manager, Dennis Galvin at 301-415-6256.

Sincerely,

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

Docket Nos. 50-498 and 50-499

cc: Listserv

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*by e-mail

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