



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

November 10, 2020

Ms. Cheryl A. Gayheart
Director, Regulatory Affairs
Southern Nuclear Operating Company
3535 Colonnade Parkway
Birmingham, AL 35243

SUBJECT: JOSEPH M. FARLEY NUCLEAR PLANT, UNITS 1 AND 2 – TEMPORARY
EXEMPTION FROM REQUIREMENTS OF 10 CFR PART 50, APPENDIX E,
SECTIONS IV.F.2.B AND IV.F.2.C (EPID L-2020-LLE-0148 [COVID-19])

Dear Ms. Gayheart:

The U.S. Nuclear Regulatory Commission (NRC, the Commission) has approved the requested exemption from specific requirements Appendix E 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 the Joseph M. Farley Nuclear Plant (Farley, FNP), Units 1 and 2. This action is in response to your application dated September 21, 2020 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML20265A353), that requested a one-time exemption from the requirements in 10 CFR Part 50, Appendix E, Sections IV.F.2.b and IV.F.2.c to allow for the conduct of the calendar year (CY) 2020, biennial onsite and offsite emergency preparedness (EP) exercise in CY 2021.

Southern Nuclear Operating Company, Inc. (SNC, the licensee) holds Renewed Facility Operating License Nos. NPF-2 and NPF-8, which authorize operation of Farley, Units 1 and 2, respectively. These licenses are subject to the rules, regulations, and Orders of the Commission.

The facility consists of two pressurized-water reactors located in Houston County, Alabama.

By letter dated September 21, 2020, SNC submitted a request for temporary exemption from Appendix E to 10 CFR Part 50, Section(s) IV.F.2.b and IV.F.2.c regarding the performance of its biennial EP exercise.

The regulations 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 regulations 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 to be performed simultaneously with exercises required by 10 CFR Part 50, Appendix E, Section IV.F.2.b.

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, you provided the following information:

- The exemption supports continued implementation of isolation activities needed to ensure emergency response organization (ERO) personnel are isolated from the COVID-19 virus and remain capable of executing the functions of the ERO, as described in the SNC Standard Emergency Plan and the Standard Emergency Plan Annex for FNP. Additionally, these isolation activities help ensure supporting State and local government personnel are protected from transmission of the COVID-19 virus and remain capable of executing the functions of the FNP ERO, as well as non-nuclear health and safety functions for the benefit of the public.
- Based on the widespread existence of the virus in the local communities, the uncertainty associated with the ease of its transmission, the need to maintain the health of the ERO, and the desire to not detract from ongoing efforts by State and local agencies responding to the existing PHE, the June 30, 2020, exercise was postponed. While performance of this exercise at any time during CY 2020 would satisfy the biennial calendar requirement, due to the ongoing threat posed by the COVID-19 PHE, SNC has determined that it is no longer feasible to schedule the biennial EP exercise before the end of CY 2020. The offsite response organizations (OROs) continue to maintain readiness to respond to an actual radiological emergency at FNP.
- 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 ERO and OROs personnel in response to the COVID-19 PHE.
- The last biennial EP exercise was conducted on October 30-31, 2018. Since that time, the licensee has conducted numerous drills, exercises, and other training activities that

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

have exercised its emergency response strategies. State officials participated in the following:

- June 25, 2019 – Training drill, with OROs participating in communication roles;
 - August 13, 2019 – Off-year exercise, with most OROs fully participating; and
 - November 5, 2019 – Training drill, with OROs participating in communication roles.
- The licensee will continue to conduct drills, exercises, and other training activities, as evidenced by FNP having scheduled training scenarios with all ERO positions through the remainder of CY 2020. This training covers position-specific material, including fleet learnings and operating experience gained in previous drills. In December 2020, FNP has a tabletop exercise scheduled for select ERO positions to support maintaining drill proficiency. Although not yet scheduled, FNP is planning to conduct similar tabletop exercises with other ERO team members during the first quarter of CY 2021.
 - The licensee made a reasonable effort to reschedule the biennial EP exercise during CY 2020, but has been unsuccessful. The uncertainties associated with COVID-19 transmission, number of new cases, hospitalizations, and deaths caused by COVID-19 have made it impractical to reschedule the onsite biennial EP exercise in CY 2020. FNP and the associated OROs have similarly concluded that the PHE conditions prevent the safe conduct of the offsite exercise prior to the end of CY 2020. On August 26, 2020, after reviewing the site, the NRC Region II, and the Federal Emergency Management Agency (FEMA) Region IV schedules, FNP proposed September 21, 2021, for the rescheduled evaluated biennial EP exercise. September 21, 2021, was determined to be acceptable by the following organizations:
 - FEMA Region IV,
 - Alabama Emergency Management Agency,
 - Georgia Emergency Management Agency,
 - Alabama Radiation Control,
 - Early County Emergency Management Agency,
 - Henry County Emergency Management Agency, and
 - Houston County Emergency Management Agency.
 - The proposed date, September 21, 2021, falls within the 35-month window ending in September 2021, for conducting FNP's biennial EP exercise from the time the previously evaluated exercise was conducted on October 30-31, 2018. FNP will continue to hold future biennial EP exercises in even years, with the subsequent biennial EP exercise to be conducted in CY 2022.

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, Sections IV.F.2.b and 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 states that it maintains adequate emergency response capabilities during intervals between biennial EP exercises by conducting drills to exercise the principal functional areas of emergency response since the last evaluated biennial exercise, and SNC identifies and documents weaknesses and areas for improvement using the Corrective Action Program, as necessary. SNC further states that it has activated onsite emergency response facilities during those drills with State, County, 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 of September 2021.

- b. 10 CFR 50.12(a)(2)(v): “The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation.”

SNC 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 FNP Standard Emergency Plan Annex. A tentative date of September 21, 2021, has been proposed.

The States of Alabama and Georgia have communicated to the licensee that they support the exemption request which proposes postponing the FNP 2020 biennial EP exercise to September 21, 2021. The exemption request for offsite exercises would allow State and local government resources to continue focusing essential response efforts on the COVID-19 PHE. The State of Alabama provided a similar message to

FEMA, stating that the FNP OROs, SNC, and the NRC have concurred with the September 2021, proposed date. The licensee stated the rescheduled biennial exercise will be coordinated with the applicable OROs, the NRC Region II, and FEMA Region IV.

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 FNP. 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 *Federal Register* 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 September 30, 2021.

If you have any questions, please contact Stephanie Devlin-Gill, Project Manager, at 301-415-5301 or at stephanie.devlin-gill@nrc.gov.

Sincerely,

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

Docket Nos. 50-348 and 50-364

cc: Listserv

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NAME	SDevlin-Gill	KGoldstein (JBurkhardt for)	SWilliams
DATE	10/20/2020	10/26/2020	10/26/2020
OFFICE	NSIR/DPR/RLB/BC*	OGC – NLO*	NRR/DORL/LPL2-1/BC*
NAME	JAnderson	AGhoshNaber	MMarkley
DATE	10/15/2020	11/04/2020	11/05/2020
OFFICE	NRR/DORL/D*		
NAME	CErlanger		
DATE	11/10/2020		

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