



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

December 9, 2020

Vice President, Operations
Entergy Nuclear Operations, Inc.
Palisades Nuclear Plant
27780 Blue Star Memorial Highway
Covert, MI 49043-9530

SUBJECT: PALISADES NUCLEAR PLANT – TEMPORARY EXEMPTION FROM BIENNIAL EMERGENCY PREPAREDNESS EXERCISE FREQUENCY REQUIREMENTS OF 10 CFR PART 50, APPENDIX E, SECTION IV.F.2.C (EPID L-2020-LLE-0155 [COVID-19])

Dear Sir or Madam:

The U.S. Nuclear Regulatory Commission (NRC, the Commission) has approved a temporary exemption from specific requirements of Appendix E to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Section IV.F.2.c for the Palisades Nuclear Plant (Palisades). This action is in response to the Entergy Nuclear Operations, Inc. (Entergy, the licensee) letter dated September 30, 2020 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML20275A110), that requested a one-time exemption for Palisades from the requirements in 10 CFR Part 50, Appendix E, Section IV.F.2.c to exclude the participation of the offsite response organizations (OROs) in the biennial emergency preparedness (EP) exercise for calendar year (CY) 2020.

Entergy holds Renewed Facility Operating License No. DPR-20, which authorizes operation of Palisades. This license is subject to the rules, regulations, and orders of the Commission. The facility consists of a pressurized-water reactor located in Van Buren County, Michigan.

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.

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 its September 30, 2020, application, Entergy provided the following information:

- The requested exemption to exclude participation of the OROs in the biennial EP exercise in CY 2020 supports the continued implementation of isolation protocols (e.g.,

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

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. These activities are needed to ensure that supporting State and local government personnel are isolated from the COVID-19 virus and remain capable of executing the functions of the ERO, as described in the Palisades Emergency Plan.

- The threat of COVID-19 spread has resulted in the inability to safely conduct the offsite biennial EP exercise that was scheduled for October 27, 2020, due to implementation of isolation activities (e.g., social distancing, group size limitations, self-quarantining, etc.). In addition, the Michigan State Police Emergency Management and Homeland Security Division (EMHSD) informed the licensee that they were no longer able to support the biennial EP exercise in the interest of protecting State and local staff, and Federal evaluators. Specifically, on September 16, 2020, the EMHSD informed Entergy (See Attachment 2 to Entergy's September 30, 2020, exemption request) that the State's order² for gatherings of less than ten people has not changed and that due to the risks involved with COVID-19, it is not safe to assemble the required personnel for an exercise.
- The last biennial EP exercise with ORO participation was conducted on April 24, 2018. Since that time, Entergy has periodically engaged the OROs at Palisades in various EP program elements and Entergy plans to continue to periodically engage the OROs at Palisades in various program elements for the remainder of CY 2020 and throughout CY 2021.
- The licensee made a reasonable effort to reschedule the biennial EP exercise during CY 2020 but was unsuccessful. During discussions with the State of Michigan, rescheduling ORO participation was deemed to not be feasible during the two remaining months in CY 2020 due to the ongoing PHE restrictions mandated by the State of Michigan, as well as competing commitments within the OROs during that time. Given the ongoing COVID-19 isolation actions and the inability to predict when the COVID-19 pandemic will end, it is not practicable to reschedule OROs' participation in a biennial EP exercise in CY 2020. Entergy requests that the duration of the exemption is until December 31, 2022, or until the ORO biennial exercise is performed, whichever occurs first.
- The exemption from participation in the CY 2020 exercise does not obviate the ability to respond should an actual emergency occur. Attachment 2 of the Entergy exemption request letter provides a copy of a letter from EMHSD, which states that (1) EMHSD has requested Federal Emergency Management Agency (FEMA) grant a cancellation of this evaluated exercise; (2) EMHSD and the counties of Van Buren, Allegan, and Berrien are "committed to maintaining their radiological emergency plans," and (3) these OROs are "not impacted in any manner that would adversely affect their ability to maintain response capability to support emergency response activities in the event of an actual nuclear power plant emergency" at Palisades.

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

² https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-529860--00.html

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.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 offsite participation portion of the biennial EP exercise from CY 2020 until, at the latest, CY 2022. 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.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 NRC recognizes that even if a licensee were to be exempted from the requirement to conduct an offsite biennial exercise in CY 2020, in the event of an actual radiological emergency, offsite authorities would respond. Offsite authorities in all States are currently demonstrating response capabilities, including making decisions on protective actions for the public, in response to the COVID-19 PHE.³ Additionally, the NRC continues to monitor U.S. nuclear power plants to ensure that they operate safely during the COVID-19 PHE and that defense-in-depth is maintained to prevent accidents from happening and to mitigate their consequences.

The NRC has consulted with the FEMA on the readiness of OROs and the use of this information to inform the NRC decision to grant exemptions, per the NRC/FEMA Memorandum of Understanding.⁴ FEMA has recently performed assessments of all offsite emergency response plan capabilities and has concluded that offsite radiological EP remains adequate to provide reasonable assurance that appropriate measures can

³ COVID-19 Resources for State Leaders, Executive Orders – By State: <https://web.csg.org/covid19/executive-orders/>.

⁴ “Memorandum of Understanding (MOU) Between the Department of Homeland Security / Federal Emergency Management Agency and Nuclear Regulatory Commission Regarding Radiological Response, Planning and Preparedness,” December 7, 2015, ADAMS Accession No. ML15344A371.

and will be taken to protect the health and safety of the public in a radiological emergency during the COVID-19 PHE.⁵ FEMA monitors response and preparedness capabilities of the OROs to ensure that the response to the current PHE does not adversely impact their ability to protect the public health and safety in the event of a radiological emergency at a commercial nuclear power plant. Exercises are just one of the many methods by which FEMA assesses and validates the adequacy of OROs' plans and ability to implement those plans. In accordance with current FEMA program guidance,⁶ FEMA has alternative means of conducting these assessments.

Based on the above, granting requests for exemption from the 10 CFR Part 50, Appendix E, Section IV.F.2.c requirement for offsite biennial exercises in CY 2020, with the next performance of the exercise to be no later than the end of CY 2022, would allow State and local governments to continue to focus their essential response efforts on the COVID-19 PHE. This exemption would apply only to the requirements of 10 CFR Part 50, Appendix E, Section IV.F.2.c, and would not address 44 CFR Part 350. An exemption from Section IV.F.2.c would not prevent a State or local authority, at its discretion, from demonstrating key skills in drills and exercises for the 8-year exercise cycle or prevent a State or local authority from conducting the exercise in CY 2020 or CY 2021.

The licensee stated that since the last biennial exercise, it has periodically engaged the ORO at Palisades in various EP program elements, with no performance issues. Entergy further states that it plans to continue to periodically engage the ORO at Palisades in various program elements for the remainder of CY 2020 and throughout CY 2021.

Therefore, the NRC staff finds that the underlying purposes of 10 CFR Part 50, Appendix E, Section IV.F.2.c are met with the rescheduled offsite biennial EP exercise to occur in CY 2022.

- 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."

EMHSD informed the licensee that it is not safe to assemble the required personnel for the scheduled biennial EP exercise due to the risks involved with COVID-19. EMHSD also informed the licensee that the Command of the Michigan State Police has requested that FEMA grant a cancellation of the October 27, 2020 evaluated exercise at Palisades.

Therefore, granting the requested exemption from the 10 CFR Part 50, Appendix E, Section IV.F.2.c requirement for offsite participation in the CY 2020 biennial EP exercise for Palisades, with the next performance of the exercise to be no later than the end of CY 2022, would provide only temporary relief from the applicable regulation and the licensee has

⁵ FEMA Preparedness Assessments, ADAMS Accession Nos. ML20164A275, ML20174A603, ML20141L795, ML20170B043, ML20170B171, ML20167A175, ML20164A038, ML20154K696, ML20154K617, ML20150A110, and ML20162A056.

⁶ Program Manual, Radiological Emergency Preparedness, FEMA P-1028, December 2019, https://www.fema.gov/media-library-data/1577108409695-4e49a0a56c8c62695dcc301272a1eda7/FEMA_REP_Program_Manual_Dec_2019.pdf.

made good faith efforts to comply with the regulation by trying to reschedule the offsite biennial EP exercise for the State of Michigan during CY 2020.

In addition to the 10 CFR 50.12(a)(2)(v) criterion identified above, the licensee also included the criterion identified in 10 CFR 50.12(a)(2)(iv).

- c. 10 CFR 50.12(a)(2)(iv): “The exemption would result in benefit to the public health and safety that compensates for any decrease in safety that may result from the grant of the exemption.”

The licensee stated that “[o]ffsite organizations are currently dealing with COVID-19 in their daily duties. Participation in the biennial exercise presents a potential health risk for those concerned who may become exposed to COVID-19. Through this exposure, they could become unable to perform their duties during a real-life emergency.”

The NRC staff recognizes that the biennial EP exercise presents concerns regarding potential health risks due to the COVID-19 PHE. This may result in ORO personnel being exposed to the virus, which could negatively impact the OROs’ ability to respond to a real-life emergency.

Therefore, granting the requested exemption from the 10 CFR Part 50, Appendix E, Section IV.F.2.c requirement for offsite participation in the CY 2020 biennial EP exercise for Palisades, with the next performance of the exercise to be no later than the end of CY 2022, would result in benefit to the public health and safety that compensates for any decrease in safety that may result from the granting of the exemption.

Based on the above, the NRC staff finds that the special circumstances of 10 CFR 50.12(a)(2)(ii), 10 CFR 50.12 (a)(iv), 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 Palisades. 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 Commission hereby grants the licensee’s request for a one-time schedular exemption from the requirements for the biennial offsite EP exercise in 10 CFR Part 50, Appendix E, Section IV.F.2.c.

This one-time exemption for Palisades from the requirements in 10 CFR Part 50, Appendix E, Section IV.F.2.c to exclude the participation of the OROs in the EP exercise for CY 2020 expires on December 31, 2022, or when the biennial offsite EP exercise is performed in CY 2022, whichever occurs first.

If you have any questions, please contact the plant project manager, Booma Venkataraman, at 301-415-2934 or Booma.Venkataraman@nrc.gov.

Sincerely,

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

Docket No. 50-255

cc: Listserv

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