



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

December 8, 2020

Mr. Ronald W. Gaston  
Director, Nuclear Licensing  
Entergy Nuclear Operations, Inc.  
1340 Echelon Parkway  
Jackson, MS 39213

SUBJECT: INDIAN POINT NUCLEAR GENERATING STATION, UNIT NOS. 1, 2 AND 3 –  
TEMPORARY EXEMPTION FROM BIENNIAL ONSITE EMERGENCY  
PREPAREDNESS EXERCISE FREQUENCY REQUIREMENTS OF  
10 CFR PART 50, APPENDIX E, SECTION IV.F.2.B  
(EPID-L-2020-LLE-0160 [COVID-19])

Dear Mr. Gaston:

The U.S. Nuclear Regulatory Commission (NRC, the Commission) has approved the requested exemption from specific requirements of Appendix E to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Section IV.F.2.b, for Indian Point Nuclear Generating Station, Unit Nos. 1, 2, and 3 (IP1, IP2, and IP3; collectively referred to as the Indian Point Energy Center (IPEC)). This action is in response to your application dated October 8, 2020 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML20282A612), as supplemented by correspondence dated November 12, 2020 (ADAMS Accession No. ML20317A344), which requested a one-time exemption from the requirements in 10 CFR Part 50, Appendix E, Section IV.F.2.b, to postpone the calendar year (CY) 2020 biennial onsite emergency preparedness (EP) exercise until CY 2021.

Entergy Nuclear Operations, Inc. (Entergy, the licensee) holds Provisional Operating License No. DPR-5, Renewed Facility Operating License No. DPR-26, and Renewed Facility Operating License No. DPR-64 for IP1, IP2, and IP3, respectively. These licenses are subject to the rules, regulations, and orders of the Commission.

The IPEC consists of two permanently shutdown pressurized-water reactors (IP1 and IP2) and one operating pressurized-water reactor (IP3) located in Westchester County, New York.

By letter dated October 8, 2020, as supplemented by correspondence dated November 12, 2020, Entergy requested a temporary exemption from Appendix E to 10 CFR Part 50, Section IV.F.2.b, regarding the performance of the CY 2020 biennial onsite 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.

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 State and local

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 (i.e., exercises required by 10 CFR Part 50, Appendix E, Sections IV.F.2.b and 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.<sup>1</sup>

In your application, you provided the following information:

- On March 7, 2020, the Governor of New York issued Executive Order 202, "Declaring a Disaster Emergency in the State of New York," to combat the spread of COVID-19. Specifically, the Governor imposed sweeping measures to protect public health and safety, including restrictions on businesses and gatherings, through Executive Orders. These measures, together known as "New York State on PAUSE," directed all non-essential businesses to close their in-person operations and banned all non-essential gatherings of individuals of any size for any reason.
- The requested exemption supports the continued implementation of the isolation activities (e.g., social distancing, group size limitations, self-quarantining) to protect required emergency response organization (ERO) personnel in response to COVID-19. 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 IPEC Emergency Plan.
- The COVID-19 PHE has resulted in the inability to safely conduct the CY 2020 biennial onsite EP exercise that was scheduled for November 17, 2020. In response to the COVID-19 PHE, as well as the New York Executive Orders, Entergy implemented protective health measures at all of its facilities. These measures include social distancing, group size limitations, mandatory use of face masks, pre-entry temperature checks, and various other COVID-19 mitigation strategies. At the present time, these protective health measures significantly impact Entergy's ability to conduct a biennial onsite EP exercise.
- This one-time schedular exemption to allow for the conduct of the CY 2020 biennial onsite EP exercise in CY 2021 supports continued implementation of the isolation activities (e.g., social distancing, group size limitations, self-quarantining) to protect required ERO personnel in response to the COVID-19 PHE.

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

- The last biennial EP exercise was conducted on September 25, 2018. Since that time, Entergy has conducted numerous drills, exercises, and other training activities at the IPEC that have exercised its emergency response strategies. These activities are tabulated and listed in the attachment to the application, entitled “IPEC Emergency Response Organization Training and Drills Performed and Scheduled.” In addition, New York State officials have participated in IPEC trainings or evaluations on the following dates:
  - January 23, 2019 – Limited state and local participation,
  - May 22, 2019 – Limited state and local participation,
  - September 10, 2019 – Full state and local participation,
  - November 20, 2019 – Full state and local participation,
  - January 29, 2020 – Limited state and local participation,
  - September 23, 2020 – Limited state and local participation, and
  - November 17, 2020 – Full state and local participation.
- The licensee will continue to conduct drills, exercises, and other training activities at the IPEC that exercise its emergency response strategies as tabulated in the attachment to the application, which include expected participation by State and local authorities to the extent practical, while also complying with CDC recommendations to limit the spread of COVID-19.
- The licensee made a reasonable effort to reschedule the biennial onsite EP exercise during CY 2020 but was unsuccessful. The Entergy-implemented protective health measures (e.g., social distancing, group size limitations, mandatory use of face masks, pre-entry temperature checks) significantly impact Entergy’s ability to conduct a biennial onsite EP exercise. In addition, based on the limited amount of available time between the originally scheduled November 17, 2020, date and the end of CY 2020, and the continued impact of the COVID-19 PHE, Entergy was unable to reschedule the biennial onsite EP exercise prior to the end of CY 2020.
- The date of the rescheduled biennial onsite EP exercise (i.e., prior to August 25, 2021) falls within 35 months from the month of the previously evaluated biennial EP exercise conducted on September 25, 2018. This exemption would defer the CY 2020 biennial onsite 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, 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 onsite 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 onsite 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. The underlying purpose of this requirement 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 licensee stated that it has conducted numerous drills, exercises, and other training activities at the IPEC that have exercised its emergency response strategies, including emergency response facility operations, with State and local participation to the extent practical. Based on the above, the NRC staff finds that the underlying purpose of this regulation is met by the licensee having conducted these preparedness activities and establishing an acceptable tentative date for the rescheduled biennial onsite EP exercise of prior to August 25, 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.”

Entergy 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) 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 IPEC Emergency Plan. A tentative date of prior to August 25, 2021, has been proposed. Additionally, Entergy stated that it has made good faith efforts to comply with 10 CFR Part 50, Appendix E, Section, IV.F.2.b, based on:

- The drills, exercises, and training activities conducted at the IPEC since the last evaluated biennial EP exercise;
- Completion of a limited state and local participation training drill on September 23, 2020;
- Entergy’s efforts to coordinate a rescheduled date that is agreeable with the Federal Emergency Management Agency, NRC Region I inspectors, the State of New York, and local counties;
- Entergy’s planned support of the offsite portion (i.e., full state and local participation) of the November 2020 EP exercise; and
- Entergy’s planned support of an expanded NRC EP Program Inspection in 2020.

Accordingly, the NRC staff finds that the requested exemption to conduct the biennial onsite 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 the IPEC. 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 onsite EP exercise in 10 CFR Part 50, Appendix E, Section IV.F.2.b.

This exemption expires on August 25, 2021.

If you have any questions, please contact the IPEC project manager, Richard Guzman, at 301-415-1030 or by e-mail to [Richard.Guzman@nrc.gov](mailto:Richard.Guzman@nrc.gov).

Sincerely,

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

Docket Nos. 50-003, 50-247, and 50-286

cc: Listserv

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 TEMPORARY EXEMPTION FROM BIENNIAL ONSITE EMERGENCY  
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 10 CFR PART 50, APPENDIX E, SECTION IV.F.2.B  
 (EPID-L-2020-LLE-0160 [COVID-19]) DATED DECEMBER 8, 2020

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**ADAMS Accession No.: ML20320A000**

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