



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

May 4, 2021

Andrea L. Sterdis
Vice President Regulatory
and Environmental Affairs
Holtec Decommissioning
International, LLC
Krishna P. Singh Technology Campus
1 Holtec Blvd.
Camden, NJ 08104

SUBJECT: OYSTER CREEK NUCLEAR GENERATING STATION – EXEMPTION FROM ANNUAL FORCE-ON-FORCE EXERCISE REQUIREMENT OF TITLE 10 OF THE *CODE OF FEDERAL REGULATIONS*, PART 73, APPENDIX B, “GENERAL CRITERIA FOR SECURITY PERSONNEL,” SUBSECTION VI.C.3(I)(1) AND SUBSECTION A.7 (EPID L-2021-LLE-0026)

Dear Ms. Sterdis:

The U.S. Nuclear Regulatory Commission (NRC, the Commission) has approved a temporary exemption from a specific requirement of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73, Appendix B, Section VI, “Nuclear Power Reactor Training and Qualification Plan for Personnel Performing Security Program Duties,” for Oyster Creek Nuclear Generating Station (OCNGS), for calendar year (CY) 2021. This action is in response to Holtec Decommissioning International (HDI, the licensee) application dated April 20, 2021 (Agencywide Documents Access and Management System [ADAMS] Accession No. ML21110A139 [non-public, withheld under 10 CFR 2.390]), that requested an exemption from 10 CFR Part 73, Appendix B, Section VI, subsection A.7, regarding the timeframe for conducting the annual force-on-force (FOF) exercises scheduled for the first quarter of CY 2021 at OCNGS, as required by 10 CFR Part 73, Appendix B, Section VI, subsection C.3(I)(1).

The requirements in 10 CFR Part 73, Appendix B, Section VI, subsections A.7 and C.3.(I)(1), respectively, state, in part:

Annual requirements must be scheduled at a nominal twelve (12) month periodicity. Annual requirements may be completed up to three (3) months before or three (3) months after the scheduled date. However, the next annual training must be scheduled twelve (12) months from the previously scheduled date rather than the date the training was actually completed.

Each member of each shift who is assigned duties and responsibilities required to implement the safeguards contingency plan and licensee protective strategy participates in at least . . . one (1) force-on-force exercise on an annual basis. Force-on-force exercises conducted to satisfy the NRC triennial evaluation requirement can be used to satisfy the annual force-on-force requirement for the personnel that participate in the capacity of the security response organization.

The purpose of the annual licensee-conducted FOF exercises is to ensure that the site security force maintains its contingency response readiness. Participation in these exercises also supports the requalification of security force members.

On January 31, 2020, the U.S. Department of Health and Human Services declared a Coronavirus Disease 2019 (COVID-19) public health emergency (PHE) for the United States, which is still in effect. Subsequently, the Centers for Disease Control and Prevention (CDC) issued recommendations (e.g., social distancing, limiting assemblies) to limit the spread of COVID-19.

The licensee's application dated April 20, 2021, stated the following, in part:

- The Governor of New Jersey declared a state of emergency on March 09, 2020, and extended the COVID-19 Public Health Emergency on April 14, 2021, with Executive Order No. 235. In response to these declarations and in accordance with the HDI Pandemic Response plan, HDI has postponed some site activities due to isolation activities (e.g., social distancing, group size limitations, self-quarantining, etc.) and also anticipates the possibility of isolation of required station personnel to maintain necessary staffing levels at OCNGS during 2021.
- At OCNGS, HDI was able to complete two 2020 annual FOF exercises on March 9, 2020, and limited scope response drills were completed on June 16, 2020, and additional training was completed during the third training cycle. Additional individual tabletops as required by approved exemptions documented in NRC letter dated May 20, 2020 (ADAMS Accession No. ML20140A130), were also completed. HDI was unable to conduct the remainder of the 2020 FOF exercises due to the COVID-19 restrictions in place and subsequently applied for, and received, exemption for 2020 FOF exercises (ADAMS Accession No. ML20345A291).
- OCNGS was scheduled to complete FOF exercises between the first and second quarter of 2021. However, these exercises have been postponed, since the PHE has not ended and continues to impact OCNGS's ability to safely conduct annual FOF exercises. Additionally, decommissioning changing plant conditions in the next few months cause significant changes with security requirements that require further planning, training and preparations. The COVID-19 and site changing conditions prevent the site from performing the annual FOF exercises as scheduled. OCNGS requests a temporary exemption from conducting 2021 annual FOF exercises in the timeframe required in 10 CFR Part 73, Appendix B, Section VI, Subsection A.7.
- Approval of this exemption will continue to support the isolation protocols necessary to protect essential site personnel while OCNGS continues to plan annual exercises that will allow personnel to stay within the COVID-19 protocols. These restrictions are needed to ensure personnel are isolated from the COVID-19 disease and remain capable of maintaining plant security. In addition, granting this temporary exemption request will allow OCNGS time to develop a plan to conduct annual FOF exercises with additional artificialities and simulations as described in Regulatory Guide 5.75, "Training and Qualification of Security Personnel at Nuclear Power Reactor Facilities," and as described during the public meeting held December 3,

2020 (ADAMS Accession No. ML20329A366) and will complete annual FOF exercises by September 1, 2021.

- As of April 15, 2021, there have been 46 total infections of OCNGS personnel across multiple work groups with many more employees having been quarantined. CDC and New Jersey Health Emergency guidance on isolation based on contact exposure continues to challenge required staff and cannot be planned for. There have been notable spikes at Oyster Creek in 2021 resulting in the isolation of several work groups including isolation of an entire contractor organization. Specifically, in March 2021, 11 employees were infected from Demolition and Security work groups. The security impact continued by affecting approximately 25 percent of security supervisors in the first week of April 2021.
- Ocean County, New Jersey (where OCNGS is located) also has the highest COVID variant positive cases of any other county in New Jersey. New Jersey confirmed COVID positive cases have more than doubled from mid-February 2021 to early April 2021 at a rate of approximately 2,000 to 4,700 new cases per day. New Jersey remains the state with the highest COVID death rate per capita of any state in the United States.
- The proposed temporary exemption will apply specifically to security personnel that are currently qualified in accordance with Appendix B to Part 73. Impacted security personnel continue to maintain proficiency with the knowledge, skills, and abilities required to effectively implement the protective strategy to protect the station against the design-basis threat as described in 10 CFR 73.1, "Purpose and Scope," because the licensee has continued to conduct the following training requalification requirements of Section VI. of Appendix B to Part 73:
 - Quarterly tactical response drills (Tabletop drills, Timeline drills, Limited-scope tactical response drills)
 - Annual firearms familiarization
 - Annual daylight qualification course
 - Annual night fire qualification course
 - Annual tactical qualification course
 - On-the-job training
 - Annual physical examination
 - Annual physical fitness test
 - Weapons range activity (4-month periodicity)
 - Annual written exam
- OCNGS will complete annual FOF exercises affected by this exemption by September 1, 2021. In addition, OCNGS will maintain a list of the names of the individuals who will not meet the requirements of 10 CFR Part 73, Appendix B, Section VI, Subsection C.3.(I)(5) and Subsection A.7.

This temporary exemption is specific to FOF exercises previously scheduled for the first quarter of CY 2021 and OCNGS security personnel who have previously demonstrated proficiency and are currently qualified in accordance with the requirements of 10 CFR Part 73, Appendix B, Section VI. The licensee stated that the proposed exemption is related only to the scheduled conduct of annual FOF exercises and does not change OCNGS's physical security plans or the

defensive strategy; security personnel impacted by this request are currently qualified on all required tasks; impacted security personnel continue to maintain proficiency with the knowledge, skills, and abilities required to effectively implement the protective strategy to protect OCNCS against the design-basis threat because OCNCS has continued to conduct other security training requalification requirements; and security personnel will continue to be monitored regularly by supervisory personnel and have implemented controls as identified in the approved temporary exemption. Therefore, the licensee stated that granting the requested temporary exemption will not endanger or compromise the common defense or security or safeguarding of OCNCS. Additionally, the April 20, 2021, request provided supporting information consistent with the NRC staff's November 10, 2020, letter (ADAMS Accession No. ML20261H515). In that letter, the staff provided criteria for expedited review of exemption requests to extend through June 30, 2021 the time for completing FOF exercises originally scheduled for the first quarter of 2021. The staff stated that "Licensees who have exercises scheduled beyond the first quarter of CY21 should have sufficient flexibility as identified in subsection A.7 and Regulatory Guide 5.75 to plan, conduct and complete their exercise within a three-month window after the scheduled date without the need for a regulatory exemption." Accordingly, the NRC is approving this exemption to allow postponement of the first quarter CY 2021 FOF exercises at OCNCS until June 30, 2021 and not through September 1, 2021, as the licensee requested.

Pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 73 when the exemptions are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest.

In accordance with 10 CFR 73.5, the Commission may grant an exemption from the regulations in 10 CFR Part 73 that is authorized by law. The NRC staff has reviewed the exemption request and finds that granting the proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or other laws. Therefore, the NRC staff finds that the exemption is authorized by law.

In accordance with 10 CFR 73.5, the Commission may grant an exemption from the regulations in 10 CFR Part 73 when the exemption will not endanger life or property or the common defense and security. This exemption will only apply to OCNCS security personnel who are already satisfactorily qualified in accordance with the security requirements in 10 CFR Part 73, Appendix B, Section VI. Based on this fact, and its review of the controls that the licensee has or will implement to ensure contingency response readiness for the duration of the exemption, including continuing to conduct quarterly tactical response drills and other security requalification requirements, the NRC staff has reasonable assurance that the security force at OCNCS will maintain its proficiency and readiness to implement the licensee's protective strategy and adequately protect the site. Therefore, the NRC staff concludes that the proposed exemption would not endanger life or property or the common defense and security.

In accordance with 10 CFR 73.5, the Commission may grant an exemption from the regulations in 10 CFR Part 73 when the exemption is otherwise in the public interest. The NRC staff finds that the temporary exemption from 10 CFR Part 73, Appendix B, Section VI, subsection A.7, for the timeframe required to conduct annual FOF exercises scheduled in the first quarter of CY 2021 until June 30, 2021, would facilitate the licensee's efforts to maintain a healthy workforce capable of maintaining the plant safely and implementing the site's protective strategy by isolating security personnel from potential exposure to the COVID-19 virus. The NRC staff concludes that granting the exemption allowing postponement of the first quarter CY 2021 FOF exercises until June 30, 2021, is otherwise in the public interest because it allows the licensee

to maintain the required security posture at OCNGS, while performing decommissioning activities.

Environmental Considerations

NRC approval of this exemption is categorically excluded under 10 CFR 51.22(c)(25), and there are no special 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, nor does it 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; and no significant increase in the potential for, or consequences from, radiological accidents because this exemption does not alter any of the assumptions or limits in the facility 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 this exemption.

Conclusions

Accordingly, the NRC has determined that pursuant to 10 CFR 73.5, the exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the NRC hereby grants an exemption to OCNGS from the timeframe required by 10 CFR Part 73, Appendix B, Section VI, subsection A.7 for conducting the annual FOF exercise requirement of security personnel in subsection C.3.(l)(1) of 10 CFR Part 73, Appendix B, Section VI. This exemption applies only to those FOF exercises required to be conducted in the first quarter of CY 2021 and is valid until June 30, 2021.

In accordance with 10 CFR 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

If you have any questions, please contact the OCNGS project manager, Zahira Cruz, at 301-415-3808 or via e-mail at Zahira.Cruz@nrc.gov.

Sincerely,



Signed by Holahan, Patricia
on 05/04/21

Patricia K. Holahan, Director
Division of Decommissioning, Uranium Recovery
and Waste Programs
Office of Nuclear Material Safety
and Safeguards

Docket No. 50-219

cc: Listserv

Pierre Paul Oneid (P.oneid@holtec.com)
Pamela B. Cowan (P.Cowan@holtec.com)

Oyster Creek - Letter - Exemption Request From Force-on-Force Exercise Requirements of 10 CFR Part 73, Appendix B for CY2021 DATE May 4, 2021

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