



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

August 25, 2021

Mr. Cleveland Reasoner
Chief Executive Officer and
Chief Nuclear Officer
Wolf Creek Nuclear Operating Corporation
P.O. Box 411
Burlington, KS 66839

SUBJECT: WOLF CREEK GENERATING STATION, UNIT 1 – TEMPORARY EXEMPTION
FROM REQUIREMENTS OF 10 CFR PART 50, APPENDIX E,
SECTIONS IV.F.2.B AND IV.F.2.C (EPID L-2021-LLE-0036 [COVID-19])

Dear Mr. Reasoner:

The U.S. Nuclear Regulatory Commission (NRC, the Commission) has approved the requested exemption from specific requirements of Appendix E, "Emergency Planning and Preparedness for Production and Utilization Facilities," to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Sections IV.F.2.b and IV.F.2.c, for the Wolf Creek Generating Station, Unit 1 (WCGS). This action is in response to your application dated July 29, 2021 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML21210A450), as supplemented by letter dated August 12, 2021 (ADAMS Accession No. ML21224A225), that requested a one-time schedular exemption to postpone the WCGS calendar year (CY) 2021 full participation biennial emergency preparedness (EP) exercise until CY 2022.

Wolf Creek Nuclear Operating Corporation (WCNOC, the licensee) holds Renewed Facility Operating License No. NPF-42, which authorizes operation of WCGS. This license is subject to the rules, regulations, and orders of the Commission. The facility consists of a pressurized-water reactor located in Coffey County, Kansas.

By letter dated July 29, 2021, as supplemented by letter dated August 12, 2021, WCNOC 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 the CY 2021 full participation biennial EP exercise at WCGS.

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 taking 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 required by Sections IV.F.2.b (onsite) and IV.F.2.c (offsite) of Appendix E 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 various recommendations (e.g., social distancing, limiting assemblies) that were intended to limit the spread of COVID-19.¹ On March 11, 2020, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization,² and on March 13, 2020, President Donald Trump declared the COVID-19 pandemic a national emergency.³

In your application, you provided the following information:

- WCNOC has determined that an exemption is needed from the full participation biennial EP exercise requirements specified in 10 CFR Part 50, Appendix E, Sections IV.F.2.b and IV.F.2.c, as meeting these requirements would conflict with practices recommended by the CDC, Kansas Department of Health and Environment (KDHE),⁴ and WCNOC’s pandemic response plan to limit the spread of COVID-19. In order to fulfill the exercise requirements of Section IV.F.2.b, WCGS would need to staff emergency facilities in a manner that would compromise current social distancing best practices. This would occur in multiple locations and unnecessarily increase the risk of exposure to personnel responsible for safe plant operation and emergency response.
- Required offsite response organizations (OROs) have determined that conducting an EP exercise during CY 2021 to fulfill 10 CFR Part 50, Appendix E, Section IV.F.2.c. would compromise social distancing practices and would be inconsistent with pandemic protocols for the State of Kansas. Coffey County emergency responders and KDHE are leading COVID-19 vaccination distribution efforts for the area. Redirecting the personnel needed to perform an EP exercise during this ongoing vaccination effort is not feasible with limited rural county staffing and would jeopardize the prioritization of the health and welfare of community members.
- In response to the declarations (cited above), and to maintain a healthy work force, WCNOC implemented practices recommended by the CDC to limit the spread of COVID-19 by implementing isolation protocols (e.g., social distancing, group size

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

² <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>, visited August 2, 2021.

³ <https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>, visited August 2, 2021.

⁴ <https://www.coronavirus.kdheks.gov/225/How-to-Protect-Yourself-Others>, visited August 19, 2021.

limitations, self-quarantining, etc.) and work-from-home requirements at WCNOG. In addition, ongoing efforts to vaccinate the population have further limited the availability of offsite resources needed to adequately schedule, perform, and evaluate the required biennial EP exercises. OROs have requested and received relief from the frequency requirement to conduct the biennial EP exercise for WCGS. Specifically, in its May 24, 2021, letter, the Federal Emergency Management Agency (FEMA) Region VII approved Kansas Division of Emergency Management's (KDEM's) request for relief to postpone the WCGS full participation biennial EP exercise, scheduled for November 16, 2021, until no later than November 2022.

- This one-time schedular exemption serves to protect supporting state and local government emergency management personnel and Federal evaluators from transmission of COVID-19 to ensure that they remain capable of executing their emergency response functions in the event of an actual WCGS emergency or in response to other non-nuclear health and safety functions for the broader benefit of the public, including the current efforts to vaccinate the public against COVID-19.
- The licensee made a reasonable effort to reschedule the full participation biennial EP exercise during CY 2021, but was unsuccessful.
 - WCNOG has been in communication with NRC Region IV, FEMA Region VII, the State of Kansas, and the responsible local offsite organizations concerning availability and exercise preparation. The isolation protocols have only recently started to relax at WCGS and remain in place at the offsite agencies.
 - FEMA has provided WCGS's OROs with relief from participation in the CY 2021 full participation biennial EP exercise, and they have been awarded partial Real World Credit for their efforts in pandemic response.
 - Letters from offsite agencies, in support of rescheduling the full participation biennial EP exercise to a CY 2022 date, are attached to the licensee's request.
- Since the last full participation biennial EP exercise on December 3, 2019, WCNOG has conducted numerous drills, exercises, and other training activities that have exercised the emergency response strategies and demonstrated proficiency. State and local agencies have participated at various levels in these activities, exercising various EP program elements during the following months:
 - June 2020
 - August 2020
 - September 2020
 - October 2020
 - March 2021
 - June 2021

- WCGS will continue to conduct drills, tabletops, and other training activities that exercise the emergency response plan and demonstrate proficiency to the extent reasonable during the PHE. The responsible OROs will continue to maintain their current emergency plans and ability to respond to an actual emergency during the pandemic. These State and local authorities will participate in limited-scope drills and training activities to the extent practical while also complying with the CDC isolation activity recommendations to limit the spread of COVID-19. The extension afforded by an exemption would not hinder their ability to respond should an actual emergency occur.
- Upon exemption approval, WCNOG will continue to support the isolation protocols necessary to protect essential site personnel during the transition period to normal operations. WCNOG continues to coordinate with the State of Kansas, local OROs, FEMA Region VII, and NRC Region IV to schedule the full participation biennial EP exercise during the summer of 2022 and has tentatively proposed to conduct the exercise between June and August 2022. WCNOG will continue to coordinate an acceptable date with NRC, FEMA, and affected OROs.
- WCNOG will work with the State of Kansas, local OROs, FEMA Region VII, and NRC Region IV to ensure that the finalized exercise date is within 35 months from the month of the December 3, 2019, date of the last evaluated full participation biennial EP exercise. Future full participation biennial EP exercises will continue to be held in odd-numbered years, beginning in CY 2023, and the 2023 full participation biennial EP exercise is currently scheduled for November 14, 2023.
- The responsible OROs have agreed with the exemption request, stating that they are not impacted in a manner that would adversely affect their ability to maintain response capability to support emergency response activities to actual nuclear power plant radiological emergencies, and that they are committed to maintaining their radiological emergency plans. The exemption request, as supplemented, includes letters from Coffey County, KDHE, and KDEM in support of the exemption. As described in the letters, the OROs continue to work closely with WCNOG and the state to maintain response capabilities in the event of an actual emergency at WCGS.

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 IV.F.2.c concern requirements for licensees to conduct full participation biennial EP exercise at their facilities. No new accident precursors are created by allowing the licensee to postpone the full participation biennial EP exercise from CY 2021 until 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 full participation 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 numerous drills, exercises, and other training activities that have exercised its emergency response strategies, in coordination with offsite authorities, and has demonstrated proficiency. State and local agencies have participated at various levels in these activities, exercising various EP program elements during the several months from June 2020 through June 2021 (listed above), and WCNOG will continue to coordinate with responsible organizations to schedule onsite and offsite EP exercises during the summer of 2022.

In addition, the licensee will continue to conduct drills, tabletops, and other training activities that exercise its emergency response plan and demonstrate proficiency to the extent reasonable during the PHE. The responsible OROs will continue to maintain their current emergency plans and ability to respond to an actual emergency during the pandemic, and will participate in limited-scope drills and training activities to the extent practical while also complying with CDC isolation activity recommendations to limit the spread of COVID-19. The extension afforded by an exemption would not hinder the ability to respond should an actual emergency occur.

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 proposal to conduct the rescheduled full participation biennial EP exercise between June and August 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.”

WCNOG requests a temporary, one-time schedular exemption from the CY 2021 full participation biennial EP exercise at WCGS. The licensee has determined that the originally scheduled exercise date does not support continued implementation of the isolation activities (e.g., social distancing, group size limitations, and self-quarantining) to protect required WCGS site personnel in response to the ongoing COVID-19 PHE. These activities are needed to protect plant personnel responsible for emergency

response and safe plant operation. In addition, the exemption serves to protect supporting state and local government emergency management personnel and Federal evaluators from transmission of COVID-19 to ensure that they remain capable of executing their emergency response functions in the event of an actual WCGS emergency or in response to other non-nuclear health and safety functions for the broader benefit of the public, including the current efforts to vaccinate the public against COVID-19.

WCNOC has been in communication with the OROs (as described above) to determine whether it is feasible to perform the CY 2021 biennial EP exercise. Required OROs have determined that conducting an exercise during CY 2021 to fulfill 10 CFR Part 50, Appendix E, Section IV.F.2.c would compromise social distancing practices and would be inconsistent with pandemic protocols for the State of Kansas. Coffey County emergency responders and KDHE are leading COVID-19 vaccination distribution efforts for the area. Redirecting the personnel needed to perform an exercise during this ongoing vaccination effort is not feasible with limited rural county staffing and would jeopardize the prioritization of the health and welfare of their community members. The licensee tentatively proposed to conduct the next full participation biennial EP exercise between June and August 2022, which is consistent with the 2022 timeframe proposed by the OROs.

Therefore, the NRC staff finds that the requested exemption to conduct the full participation biennial EP exercise in CY 2022 instead of CY 2021 would provide only temporary relief from the applicable regulations, and that the licensee has made good faith efforts to comply with the regulations.

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 WCGS. 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 full participation biennial EP exercise in 10 CFR Part 50, Appendix E, Sections IV.F.2.b and IV.F.2.c at WCGS.

This exemption expires on November 30, 2022, or when the required exercise(s) is conducted in CY 2022, whichever occurs first.

If you have any questions, please contact the WCGS project manager, Samson Lee, at 301-415-3168, or via e-mail at Samson.Lee@nrc.gov.

Sincerely,

Bo M. Pham, Director
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket No. 50-482

cc: Listserv

SUBJECT: WOLF CREEK GENERATING STATION, UNIT 1 – TEMPORARY EXEMPTION FROM REQUIREMENTS OF 10 CFR PART 50, APPENDIX E, SECTIONS IV.F.2.B AND IV.F.2.C (EPID L-2021-LLE-0036 [COVID-19]) DATED AUGUST 25, 2021

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