

## SAFETY EVALUATION REPORT

DOCKET NO.: 70-143

LICENSEE: Nuclear Fuel Services, Inc., – Erwin, Tennessee

SUBJECT: TEMPORARY EXEMPTION FROM THE 2021 BIENNIAL EVALUATED EMERGENCY PLAN EXERCISE REQUIRED BY 10 CFR 70.22(I)(3)(XII) (ENTERPRISE PROJECT IDENTIFIER L-2021-EPR-0003)

### REQUEST

By letter dated September 17, 2021 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML21260A249), as supplemented by letter dated October 7, 2021 (ADAMS Accession No. ML21288A132), Nuclear Fuel Services, Inc., – Erwin, Tennessee (NFS) submitted a request for an exemption from certain requirements of Title 10 of the *Code of Federal Regulations* (10 CFR), Paragraph 70.22(i)(3)(xii), “Exercises.” In particular, NFS requests a one-time exemption from the provisions in 10 CFR 70.22(i)(3)(xii), which require a biennial emergency plan exercise.

NFS proposes to reschedule the conduct of the calendar year (CY) 2021 biennial exercise within 35 months from the date on which the previously evaluated exercise was conducted on September 18, 2019, to a date on or before June 30, 2022. In addition, NFS states that future biennial emergency plan exercises will continue to be conducted in odd years starting in CY 2023.

### BACKGROUND

Currently, NFS is required by regulation to conduct emergency plan exercises biennially. Under NFS’s Emergency Plan, Section 7.3.1, NFS will conduct at least one exercise every other year to simulate an onsite emergency condition that will require participation by the site emergency organization and a number of offsite support agencies.

NFS states that in August 2021, the northeast Tennessee region, which includes Carter Greene, Hawkins, Johnson, Sullivan, Unicoi (where NFS is located), and Washington counties, reported a concerning resurgence in new positive Coronavirus Disease 2019 (COVID-19) tests. According to NFS, the regional hospitals further provided an update on September 7, 2021, that there have been continued increases in new COVID-19 cases in the local area due to the highly contagious Delta variant. NFS also states that case counts have increased from less than 200 in early July 2021 to about 6,000 at the time of submission, with the region reporting 2,692 new positive COVID-19 cases in the four days before submission. In fact, NFS notes that the region’s hospitals and affected counties have asked for everyone to help prevent this trend from continuing. In addition, the NFS facility reinstated several COVID-19 protective measures for individuals regardless of vaccination status.

NFS states that the exercise scenario requires participation by a designated onsite controller/evaluator team, the onsite emergency response organization, first responder teams, the onsite security organization, and the U.S. Nuclear Regulatory Commission’s (NRC) staff for evaluation. NFS notes that this will result in a large group of individuals together in the site emergency response center that could challenge COVID-19 related isolation guidelines (e.g.,

social distancing and group size limitations). Because of the rising positive COVID-19 cases in the local area and the increased number of personnel involved in an evaluated exercise, NFS concluded that an evaluated exercise cannot be conducted as scheduled on November 9, 2021, without unnecessarily increasing the risk of COVID-19 exposure to NFS staff, offsite responders, and potentially members of the public.

NFS's last biennial emergency plan exercise was conducted in September 2019. NFS indicates that it has made a reasonable effort to reschedule the emergency plan exercise in CY 2021 but has been unsuccessful. NFS started preparation efforts for the November 9, 2021, exercise in July 2021. NFS selected the November 9, 2021, date with the expectation that COVID-19 conditions would be improved. Since then, however, northeast Tennessee has experienced a severe surge in new COVID-19 cases. Due to this significant increase in COVID-19 transmission and with offsite agencies continuing to be taxed, NFS requested an extension, NFS has also determined that with the potential for new surges during the holidays, rescheduling the biennial drill in CY 2021 would not be prudent to the risk of community spread to the already stressed participating offsite agencies. NFS states that it plans to conduct the rescheduled biennial plan exercise on or before June 30, 2022, which is within 35 months from the date on which the previously evaluated emergency plan exercise was conducted. Since the last biennial emergency plan exercise was conducted on September 18, 2019, NFS indicated that it has continued to conduct drills and other training activities that exercise its emergency response strategies internally and with offsite agencies, such as:

- Maintaining the NFS quarterly emergency response organization and Fire Brigade drills/training.
- Conducting training, hands-on activities, and briefings on topics such as updates to the emergency preparedness program, radiation safety, contamination control protocols, nuclear criticality safety in firefighting, and emergency management services/hospital management of radiation emergencies. These training activities were conducted with the offsite agencies of the Erwin Fire Department, South Unicoi County Volunteer Fire Department, Unicoi County Emergency Medical Services, Unicoi County Hospital, and the Unicoi County Emergency Management Director.

In addition, NFS states that it will coordinate with the applicable offsite response organizations and NRC Region II to schedule and conduct the rescheduled biennial emergency exercise by June 30, 2022.

#### DISCUSSION – NRC STAFF REVIEW PURSUANT TO 10 CFR 70.17(a)

The NRC issued a letter on May 14, 2020 (ADAMS Accession No. ML20120A003), to the Nuclear Energy Institute related to emergency biennial exercise requirements during the COVID-19 public health emergency for all licensees under 10 CFR Parts 30, 40, 50, 52, 70 and 72 that have a radiological emergency plan. The letter stated, in part:

[T]he NRC is prepared to consider on an expedited basis requests for exemptions, upon request from individual licensees, from the biennial emergency plan exercise requirements that are specified in . . . 10 CFR 70.22(i)(3)(xii). . . . These exemptions would, if granted, ensure that licensees engage in activities that do not conflict with practices recommended by the Centers for Disease Control and Prevention to limit the spread of COVID-19.

The NRC issued another letter on November 10, 2020 (ADAMS Accession No. ML20261H515), to the Nuclear Energy Institute, which included discussion of emergency plan requirements, including 10 CFR 70.22(i)(3)(xii). The NRC stated that licensees seeking to move biennial emergency plan exercises from CY 2021 to CY 2022 should continue to consider the guidance in the NRC's letter dated May 14, 2020, and should continue to provide the information requested in the letter.

Consistent with the NRC letter dated November 10, 2020, and the section entitled "Requested Information" in the NRC letter dated May 14, 2020, NFS provided the following information:

- NFS's last biennial exercise was conducted in September 2019.
- NFS's current biennial emergency plan exercise date was scheduled to be held on November 9, 2021.
- NFS has made a reasonable effort to reschedule the planned exercise in CY 2021 but has been unsuccessful.
- NFS will reschedule the conduct of the biennial emergency plan exercise within 35 months from the month in which the previously evaluated exercise was conducted.
- If this exemption is granted, NFS states that future biennial exercises will continue to be held in odd years.
- NFS has conducted drills, exercises, and other training activities that exercised its emergency response strategies, in coordination with offsite authorities, since the previous biennial exercise.
- NFS also states that the rescheduled biennial exercise will be coordinated with the applicable offsite response organizations (if offsite response organization participation is required) and NRC Region II.

The November 10, 2020, letter noted that licensees could continue to consider the guidance in the letter dated May 14, 2020, when moving exercises from CY 2021 to CY 2022. Per the May 14, 2020, letter, licensees need to provide the date of their last biennial exercise. Rather than providing the precise date of its previous exercise, NFS told the NRC that the previous exercise had been conducted in September 2019. The NRC staff views this as sufficiently precise to still provide expedited review. The NRC staff notes that NFS's previous exercise was conducted on September 18, 2019.

Pursuant to 10 CFR 70.17(a), the NRC may grant an exemption from the requirements of 10 CFR Part 70 if the staff determines that 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.

The NRC staff has reviewed the requested exemption and determined that it is permissible under the Atomic Energy Act of 1954, as amended, and that no other prohibition of law or the Commission's regulations 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.

NFS also states that it will continue to perform other periodic emergency drills, training, and surveillances that allow personnel to stay within COVID-19 protocols and maintain emergency response proficiency. Examples of already-conducted activities include (1) quarterly emergency response organization and Fire Brigade drills/training; and (2) training, hands-on activities, and briefings on topics such as updates to the emergency preparedness program, radiation safety, contamination control protocols, nuclear criticality safety in firefighting, and emergency management services/hospital management of radiation emergencies with offsite agencies.

Additionally, the requested exemption does not decrease the effectiveness of NFS's emergency plan, nor involve changes to security at the facility. Further, the licensee will reschedule the exercise within 35 months from the month in which the previously evaluated exercise was conducted. Therefore, the staff finds that granting the exemption would not endanger life or property or the common defense and security.

Finally, granting this exemption request is otherwise in the public interest because it promotes public health and safety by following social distancing recommendations related to the transmission of the COVID-19 virus. As discussed above, the local area in which the NFS facility is located has seen rising COVID-19 caseloads. More specifically, case counts have increased from less than 200 in early July 2021 to about 6,000 at the time of submission, with the region reporting 2,692 new positive COVID-19 cases in the four days before submission. In fact, NFS notes that the region's hospitals and affected counties have asked everyone to help prevent this trend from continuing. Conducting this exercise in November 2021 involves increased numbers of personnel. Thus, granting this exemption will minimize the risk to NFS staff, offsite responders, and potentially members of the public, of exposure to the COVID-19 virus. Therefore, the NRC staff concludes that granting this exemption is in the public interest.

## ENVIRONMENTAL REVIEW

Pursuant to 10 CFR 51.22(b) and 10 CFR 51.22(c)(25)(vi)(G), provided that there are no special circumstances, the granting of an exemption from the requirements of any regulation in Chapter I of 10 CFR is a categorical exclusion, provided that: (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve, as relevant here, scheduling requirements.

For the reasons described below, NFS's request meets the criteria for a 10 CFR 51.22(c)(25) categorical exclusion. There are no special circumstances here which require an environmental assessment or environmental impact statement. The NFS facility is not a reactor and this exemption is limited to timing of an emergency exercise, so there are no significant hazards considerations. Because the request by NFS pertains to an exemption from conducting a biennial emergency exercise, there are no effluents or offsite releases or significant increase in radiation exposure to workers or members of the public associated with this request. There are no construction activities associated with this request, so there is no significant construction impact. There is no significant increase in the potential for any radiological accidents associated with this request because the request for exemption from performing an emergency plan exercise does not affect the facility's operations. Finally, given that the exemption concerns the scheduling of an emergency exercise, the exemption is related to a scheduling requirement. Therefore, pursuant to 10 CFR 51.22(b) and 10 CFR 51.22(c)(25)(vi)(G), no

environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

### CONCLUSION

Based on its review above, the NRC staff concludes that the postponement of the biennial emergency plan exercise to be authorized by the issuance of this exemption is in compliance with the law and will not endanger life or property or the common defense and security. The NRC staff also concludes that granting the exemption is in the public interest. Accordingly, the NRC hereby grants NFS a temporary exemption, until 35 months from the previously evaluated exercise from the requirements in 10 CFR 70.22(i)(3)(xii) pertaining to the timeframe for biennial emergency plan exercises.

A new License Condition S-6(a) has been issued to reflect the exemption as follows:

- S-6(a) The licensee is granted an exemption from performing the biennial emergency plan exercise listed in 10 CFR 70.22(i)(3)(xii) in calendar year 2021 but must complete said exercise within 35 months of the previously evaluated emergency plan exercise which occurred on September 18, 2019. Following that evaluated exercise, the licensee will conduct biennial emergency plan exercises in odd number years.

### PRINCIPAL CONTRIBUTOR

Ken Mott, NSIR/DPR/RLB