



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

January 14, 2022

Mr. Terry J. Brown
Site Vice President
Energy Harbor Nuclear Corp.
Mail Stop P-DB-3080
5501 North State Route 2
Oak Harbor, OH 43449-9760

SUBJECT: DAVIS-BESSE NUCLEAR POWER STATION, UNIT NO. 1 – EXEMPTION
FROM SPECIFIC REQUIREMENTS OF 10 CFR PART 26
(EPID L-2022-LLE-0002 [COVID-19])

Dear Mr. Brown:

The U.S. Nuclear Regulatory Commission (NRC) has approved the requested temporary exemption from specific requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 26, "Fitness for Duty Programs," Section 26.205, "Work hours," for Davis-Besse Nuclear Power Station, Unit No. 1 (Davis-Besse). This action is in response to the Energy Harbor Nuclear Corp. (the licensee) application dated January 12, 2022 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML22012A301), as supplemented by letter dated January 13, 2022 (ADAMS Accession No. ML22013B175). The application, as supplemented, cited the March 28, 2020 (ADAMS Accession No. ML20087P237), letter from Mr. Ho Nieh describing a process to request expedited review of certain exemptions from 10 CFR Part 26 during the Coronavirus Disease 2019 (COVID-19) public health emergency (PHE).

The application, as supplemented, provided the following information:

- A statement that explains how, and for which covered groups at Davis-Besse, the COVID-19 PHE impacts the licensee's ability to meet the work-hour control requirements of 10 CFR 26.205(d)(1)–(d)(7);
- A statement that describes how the licensee would use an exemption from the 10 CFR 26.205(d)(1)–(d)(7) work-hour control requirements to manage the impact of the COVID-19 PHE on maintaining plant operational safety and security at Davis-Besse;
- A list of positions for which the licensee may implement alternative work-hour controls at Davis-Besse upon the NRC granting the requested exemption;
- The date and time when the licensee will begin implementing site-specific COVID-19 PHE fatigue-management controls at Davis-Besse for personnel specified in 10 CFR 26.4(a);

- A statement that the licensee’s site-specific COVID-19 fatigue-management controls at Davis-Besse are consistent with the constraints outlined in the March 28, 2020, letter; and
- A statement that the licensee will establish alternative controls at Davis-Besse for the management of fatigue during the period of the exemption and that, at a minimum, the controls ensure the following for individuals subject to these alternative controls:
 - Individuals will not work more than 16 work hours in any 24-hour period and not more than 86 work hours in any 7-day period, excluding shift turnover;
 - A minimum 10-hour break is provided between successive work periods;
 - 12-hour shifts are limited to not more than 14 consecutive days;
 - A minimum of 6 days off is provided in any 30-day period;
 - The calculation of work hours and days off includes all work hours and days off during the applicable calculation periods, including those work hours and days off preceding initiation of the exemption period; and
 - Requirements have been established for behavioral observation and self-declaration during the period of the exemption.

Therefore, the NRC finds that the technical basis for an exemption described in the March 28, 2020, and November 10, 2020 (ADAMS Accession No. ML20261H515), letters from Mr. Ho Nieh is applicable to the licensee’s application, as supplemented.

The NRC staff previously approved a similar exemption request for Davis-Besse, with the preceding exemption period ending on January 18, 2021 (ADAMS Accession No. ML20323A412). Because the requested exemption will not begin within 14 days of the end of the most recent exemption for Davis-Besse, the licensee has had sufficient time to manage the potential for cumulative fatigue by implementing the standard work-hour controls administered in accordance with 10 CFR Part 26. Therefore, no additional information regarding the technical basis for this subsequent exemption request (as discussed in the November 10, 2020, letter from Mr. Ho Nieh) was needed for the NRC staff to review it under the expedited process.

Section 26.9, “Specific exemptions,” of 10 CFR allows the NRC to grant exemptions from the requirements of 10 CFR Part 26, as it determines are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest.

The NRC determined that the requested exemption is permissible under the Atomic Energy Act of 1954, as amended, and other regulatory requirements. Therefore, the NRC finds that the requested exemption is authorized by law.

The underlying purpose of 10 CFR 26.205(d) is to prevent impairment from fatigue due to duration, frequency, or sequencing of successive shifts. Based on the evaluation provided in the NRC’s March 28 and November 10, 2020, letters, along with the criteria discussed above, no new accident precursors are created by using whatever licensee staff resources may be

necessary or available during the term of this exemption to respond to a plant emergency and to ensure that the plant maintains a safe and secure status. Therefore, the probability of postulated accidents is not increased. Also, the consequences of postulated accidents are not increased because there is no change in the types of accidents previously evaluated. The requested exemption would allow the use of licensee staff resources as may be necessary to maintain safe operation of the plant and to respond to a plant emergency. Therefore, the NRC finds that the requested exemption will not endanger life or property.

The requested exemption would allow the use of licensee security staff resources as may be necessary to ensure the common defense and security. Therefore, the NRC finds that the requested exemption will not endanger the common defense and security.

Due to the impacts that the COVID-19 PHE has had on the licensee's ability to comply with the work-hour controls of 10 CFR 26.205(d), the importance of maintaining the operations of Davis-Besse, and the controls the licensee has established, the NRC finds that granting the requested exemption is in the public interest.

Granting the requested exemption from the requirements of 10 CFR 26.205 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)(I), that the requirements from which the exemption is sought involve other requirements of an administrative, managerial, or organizational nature.

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, does not authorize changes to any of the assumptions or limits used in the licensee's safety analyses, and does not 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 the 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 this exemption request.

Based on the above, the NRC staff finds that (1) the exemption is authorized by law, (2) the exemption will not endanger life or property or the common defense and security, and (3) the exemption is otherwise in the public interest.

T. Brown

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This exemption is effective from January 14, 2022, through March 14, 2022.

Sincerely,

Brian D. Wittick, Acting Deputy Director
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket No. 50-346

cc: Listserv

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FROM SPECIFIC REQUIREMENTS OF 10 CFR PART 26 (EPID
L-2022-LLE-0002 [COVID-19]) DATED JANUARY 14, 2022

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ADAMS Accession No.: ML22012A399 *via concurrence with model safety evaluation

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