

November 17, 2023

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, DC 20555

R.E. Ginna Nuclear Power Plant
Renewed Facility Operating License No. DPR-18
NRC Docket Nos. 50-244 and 72-67

Subject: Supplemental Information Letter for Part 73 Exemption Request – Responses to Request for Confirmatory Information and Request for Additional Information

- References:**
1. Letter from D. Gudger (Constellation Energy Generation, LLC) to U.S. Nuclear Regulatory Commission, "Request for Exemption from Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Implementation," dated October 16, 2023 (ML23289A104)
 2. Email from Scott Wall (NRC Senior Project Manager) to Ron Reynolds (Constellation Energy Generation, LLC), "Final RCI/RAI - Constellation Energy Generation, LLC – Ginna - Exemption from Security Rule," dated November 7, 2023 (ML23312A130)

By letter dated October 16, 2023 (Reference 1), Constellation Energy Generation, LLC (CEG) requested an exemption for R.E. Ginna Nuclear Power Plant (Ginna), from the compliance date of January 8, 2024, for the new security Rule, "Enhanced Weapons, Firearms Background Checks, and Security Event Notifications." The requested exemption was based on the NRC's projected timeline for completion of revision to the applicable Regulatory Guides associated with the new rule, and the time necessary for Ginna to process change management adequately to include the number of training weeks that will be required to implement the Rule. Ginna requested a new compliance date of December 31, 2024, or 180 days after publication of final Regulatory Guides, whichever is later.

On November 2, 2023, the NRC issued, via email, a draft Request for Confirmatory Information (RCI) and Request for Additional Information (RAI). A clarification call with the NRC and CEG was held on November 7, 2023, resulting in a formal RCI/RAI request issued the same day on November 7, 2023 (Reference 2).

The Attachment to this supplemental information letter provides responses to the RCI and RAI provided in Reference 2. In addition, the Attachment also includes information that supplements the Reference 1 submittal that was not sufficiently discussed and is captured in response to RAI question 1.c.

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There are no regulatory commitments contained in this supplement.

If you should have any questions concerning this submittal, please contact Richard Gropp at 1-267-533-5642.

Respectfully,

David T. Gudger

David T. Gudger
Sr. Manager, Licensing
Constellation Energy Generation, LLC

Attachment: Supplemental Information Letter

cc: w/ Attachment
Regional Administrator - NRC Region I
Senior Resident Inspector - Ginna
Resident Inspector - Ginna
NRC Project Manager, NRR - Ginna
Scott Wall, NRC Fleet Project Manager, NRR
A. L. Peterson, NYSERDA
C. Powers, NYSPSC

SUPPLEMENTAL INFORMATION

This Supplemental Information provides responses to the Request for Confirmatory Information (RCI) and Request for Additional Information (RAI) provided by the NRC in Reference 2. Each confirmatory request and request for additional information is provided below followed by CEG's response. In addition, this Attachment also includes information that supplements the Reference 1 submittal that was not sufficiently discussed and is captured in response to RAI question 1.c. below.

Request for Confirmatory Information Questions

1. *Regarding CEG's request for exemption from the January 8, 2024, compliance date, please confirm the following:*
 - *CEG is requesting an exemption for Ginna from specific requirements, as described below, associated with the final rule for Enhanced Weapons, Firearms Background Checks, and Security Event Notifications, as identified in your submission; that would defer compliance with those provisions until December 31, 2024, or 180 days after publication of final Regulatory Guides, whichever is later.*

CEG Response:

Yes, CEG is requesting an exemption for Ginna from specific requirements, as described below, associated with the final rule for Enhanced Weapons, Firearms Background Checks, and Security Event Notifications, as identified in Ginna's submittal dated October 13, 2023 (ML23286A036), that would defer compliance with those provisions until December 31, 2024, or 180 days after publication of final Regulatory Guides, whichever is later.

- *CEG is requesting an exemption for Ginna from specific requirements in 10 CFR Part 73, Subpart T, "Security Notifications, Reports, and Recordkeeping," 10 CFR 73.1200(a) through 10 CFR 73.1200(t), "Notification of Physical Security Events," 10 CFR 73.1205(a)(1) through 10 CFR 73.1205(e), "Written Follow-up Reports of Physical Security Events," 10 CFR 73.1210(a)(1) through 10 CFR 73.1210(h), "Recordkeeping of Physical Security Events," and "Suspicious Activity Reports," 10 CFR 73.1215(a) through 10 CFR 73.1215(f) until the later of December 31, 2024, or 180 days after publication of the final Regulatory Guides.*

CEG Response:

Yes, CEG is requesting an exemption for Ginna from specific requirements in 10 CFR Part 73, Subpart T, "Security Notifications, Reports, and Recordkeeping," 10 CFR 73.1200(a) through 10 CFR 73.1200(t), "Notification of Physical Security Events," 10 CFR 73.1205(a)(1) through 10 CFR 73.1205(e), "Written Follow-up Reports of Physical Security Events," 10 CFR 73.1210(a)(1) through 10 CFR 73.1210(h), "Recordkeeping of Physical Security Events," and 10 CFR 73.1215(a) through 10 CFR 73.1215(f), "Suspicious Activity Reports," until the later of December 31, 2024, or 180 days after publication of the final Regulatory Guides.

- *CEG is requesting an exemption for Ginna from using the definitions for the terms "Contraband," and "Time of Discovery" as recently revised in 10 CFR 73.2, "Definitions," until the later of December 31, 2024, or 180 days after publication of the final Regulatory*

Guides. The exemption would not apply to the definitions of those terms that were in effect prior to the issuance of the 2023 revisions.

CEG Response:

Yes, CEG is requesting an exemption for Ginna from using the definitions for the terms "Contraband," and "Time of Discovery" as recently revised in 10 CFR 73.2, "Definitions," until the later of December 31, 2024, or 180 days after publication of the final Regulatory Guides. The exemption would not apply to the definitions of those terms that were in effect prior to the issuance of the 2023 revisions.

2. *Confirm that the current Ginna site security plan implements the requirements of 10 CFR 73.71, "Reporting of Safeguards Events" for reporting the suspension of security measures.*

CEG Response:

CEG confirms that the current Ginna site security plan implements the requirements of 10 CFR 73.71, "Reporting of Safeguards Events" for reporting the suspension of security measures.

- *Confirm that Ginna will continue to comply with security event reporting, as previously required in 10 CFR 73.71, "Reporting of Safeguards Events," and Appendix G to Part 73, "Reportable Safeguards Events."*

CEG Response:

CEG confirms that Ginna will continue to comply with security event reporting, as previously required in 10 CFR 73.71, "Reporting of Safeguards Events," and Appendix G to Part 73, "Reportable Safeguards Events."

- *Confirm that Ginna will use the definitions for the terms "Contraband" and "Discovery (time of)" in its site security plan consistent with how these terms are currently defined in Regulatory Guide 5.76, Revision 1, "Physical Protection Programs at Nuclear Power Reactors."*

CEG Response:

CEG confirms that Ginna will use the definitions for the terms "Contraband" and "Discovery (time of)" in its site security plan consistent with how these terms are currently defined in Regulatory Guide 5.76, Revision 1, "Physical Protection Programs at Nuclear Power Reactors."

3. *Confirm that when Ginna states that it is implementing the new Access Authorization Rule it actually means that it is implementing the new 2022 10 CFR Part 26 Fitness for Duty Rule (87 FR 71422, November 22, 2022)?*

CEG Response:

CEG confirms that the statement in its exemption request that "CEG is in the process of implementing the new Access Authorization Rule" was made in error. What the statement intended to say is that CEG is in the process of implementing the new 2022 10 CFR Part 26 Fitness for Duty Rule (87 FR 71422, November 22, 2022).

4. *Confirm that Ginna is currently complying with the requirements of Orders EA-13-092 and EA-14-139 (ML13038A114 and ML14260A151, respectfully).*

CEG Response:

CEG confirms that Ginna is currently complying with the requirements of Orders EA-13-092 and EA-14-139 (ML13038A114 and ML14260A151, respectfully).

Request for Additional Information Questions

1. *Licenses that received an order issued under Section 161A (42 U.S.C. 2201a) prior to April 13, 2023, are not required to reapply for this authority. The requirements of such orders are superseded in their entirety by 10 CFR 73.15 and 10 CFR 73.17, and the orders will be withdrawn on January 8, 2024. Accordingly, these licenses must complete their transition from the confirmatory orders to the requirements in 10 CFR 73, Subpart B by January 8, 2024.*
 - a. *Specify whether CEG is requesting an exemption to the compliance date for Ginna to comply with the specific requirements in 10 CFR Part 73, Subpart B, "Enhanced Weapons, Preemption, and Firearms Background Checks," as set forth in 10 CFR 73.15, "Authorization for Use of Enhanced Weapons and Preemption of Firearms Laws," and 10 CFR 73.17, "Firearms Background Checks for Armed Security Personnel" in its entirety or in part.*

CEG Response

CEG is requesting an exemption to the compliance date for Ginna to comply with the specific requirements in 10 CFR Part 73, Subpart B, "Enhanced Weapons, Preemption, and Firearms Background Checks," as set forth in 10 CFR 73.15, "Authorization for Use of Enhanced Weapons and Preemption of Firearms Laws," and 10 CFR 73.17, "Firearms Background Checks for Armed Security Personnel" in part. Refer to response in 1.c. below.

- b. *If CEG is requesting an exemption from 10 CFR Part 73, Subpart B, in its entirety, provide a discussion of the impacts, justification, and/or rationale for an exemption from the requirements in 10 CFR 73.15 and 10 CFR 73.17.*

CEG Response

CEG is not requesting an exemption from 10 CFR Part 73, Subpart B, in its entirety.

- c. *If CEG is requesting an exemption from 10 CFR Part 73, Subpart B, in part, identify the specific provisions in 10 CFR 73.15 and 10 CFR 73.17 for which an exemption is being requested and provide a discussion of the impacts, justification, and/or rationale for an exemption from these requirements.*

CEG Response

CEG is requesting an exemption for Ginna from specific requirements in 10 CFR Part 73, Subpart B, "Enhanced Weapons, Preemption, and Firearms Background Checks" 10 CFR 73.15(s)(3), "Authorization for use of Enhanced Weapons and Preemption of Firearms Laws," and 10 CFR Part 73.17(a) through 10 CFR 73.17(q), "Firearms Background Checks for Armed Security Personnel," until the later of December 31, 2024, or 180 days after publication of the final Regulatory Guides.

To further justify CEG's position for an exemption from these requirements, the discussion below provides the impacts, justification, and rationale.

Examples of clarification needed in RG 5.86, Revision 0, "Enhanced Weapons Authority, Preemption Authority, and Firearms Background Checks," include:

NRC Notification Upon the Occurrence of Removing Security Personnel from Duties due to a Disqualifying Status Condition or Event.

- Section 73.17(g)(1) requires Licensees to notify the NRC Headquarters Operations Center within 72 hours after removing security personnel from duties requiring access to covered weapons due to the identification or occurrence of any Federal or State disqualifying status condition or disqualifying event that would prohibit them from possessing, receiving, or using firearms or ammunition.
 - RG 5.86, Revision 0, Section B. Discussion, page 18, states, "However, under the exception in 10 CFR 73.17(g)(2), licensees are not required to notify the NRC if the affected individual (i.e., security personnel) notifies the licensee's security management within 72 hours of the identification or occurrence of any Federal or State disqualifying status condition or disqualifying event that would prohibit the individual from possessing, receiving, or using firearms or ammunition.
 - Section 73.17(g)(2) states, "The NRC will subsequently inform the FBI of any notifications received under this paragraph." The exception described in RG 5.86, Revision 0, to be present in 73.17(g)(2) does not exist.

The conflict between performing the NRC notification or not for the removal of security personnel from duties when such personnel disclose a disqualifying status condition or event only exists because of regulatory guidance in RG 5.86. As a best practice, and to support accurate determination of notification events, station personnel are trained in referencing published RGs, station procedures and guidance, and other industry documents. Additional clarity is needed in order to support the implementation of 73.17 Firearms Background Checks for Armed Security Personnel in a consistent and successful manner.

Training Periodicity

- Section 73.17(j)(2) requires Licensees to conduct periodic refresher training at an annual frequency for security personnel assigned official duties requiring access to covered weapons.
- RG 5.86, Revision 0, Section 6.8, page 40, captures the same requirement under 73.17(j) that training must be provided to affected security personnel on an annual basis. However, the RG is silent in defining and/or referencing how this annual requirement is scheduled.
 - Section VI, paragraph A.7 of Appendix B to 10 CFR Part 73, states that 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.
 - RG 5.75, Revision 1, Section 1. General Requirements and Introduction, references annual training requirements to be scheduled consistent with Section VI, paragraph A.7 of Appendix B to 10 CFR Part 73.

Although it is clear the Firearms Background Check Plan where this refresher training requirement must be captured must also be established under the overall NRC-approved Training and Qualification plan, providing the appropriate reference within RG 5.86 would remove any ambiguity in the periodicity of the scheduling of this training requirement.

Examples, in part, of the requirements under the new rule that were either not required per the initial Order or revised:

- Section 73.17(e)(1)(ii) A completed NRC Form 754.
 - This form was not a requirement per the initial Order and did not exist until codifying of the new rule.
- Section 73.17(h) Security personnel assigned to duties requiring access to covered weapons must notify the licensee's security management within 72 hours of the identification or occurrence of any Federal or State disqualifying status condition or disqualifying event that would prohibit the individual from possessing, receiving, or using firearms or ammunition.
 - The initial Orders required individuals who require access to firearms shall notify the licensee's security management within three (3) working days of the occurrence or existence of any disqualifying event or status.
- 73.17(j)(2) Requires periodic refresher training at an annual frequency for security personnel assigned official duties requiring access to covered weapons.

Specifically, this training must include topics associated with federal disqualifying status conditions or events specified in 27 CFR 478.32, applicable state disqualifying conditions or events, the responsibility of security personnel subject to firearms background checks to promptly notify their employing licensee of any disqualifying status condition or event, and information for appealing an adverse firearms background check to the FBI.

- The initial Orders required no such periodicity requirement for the training of these topics.
- 73.17(k)(2)(i) Requires specific terms to be used in fields of the FBI Form FD-258 (i.e., “Firearms” in the “Reasons Fingerprinted” field) that are different from the terms required to be used in the initial orders (i.e., “Firearms Background Check [42 U.S.C. 2201a] in the “Reasons Fingerprinted” field).

The burden associated with rework for CEG is unnecessary while awaiting final clarity with publication of associated RGs. Several examples of where rework will be required are:

- Revisions of associated procedures/processes, training materials, and lesson plans that are used to describe and elaborate on notification requirements. Additionally, procedures to be developed as part of implementation for the requirements of 73.1200 *Notification of Physical Security Events* and 73.1215 *Suspicious Activity Reports* will include notification requirements per 73.17 *Firearms Background Checks for Armed Security Personnel*.
- The re-training of impacted station personnel with updated information contained within the revised guidance document:
 - Security
 - Regulatory Assurance

CEG confirms that Ginna will continue to comply with the established implementing procedures and processes developed and initially implemented as part of the NRC-approved Security Plan as a result of Orders EA-13-092 and EA-14-139 (ML13038A114 and ML14260A151, respectfully).