



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

January 17, 2024

Mr. David P. Rhoades  
Senior Vice President  
Constellation Energy Generation, LLC  
President and Chief Nuclear Officer (CNO)  
Constellation Nuclear  
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SUBJECT: LIMERICK GENERATING STATION, UNITS NOS. 1 AND 2 – EXEMPTION  
FROM SELECT REQUIREMENTS OF 10 CFR PART 73  
(EPID L-2023-LLE-0026 [SECURITY NOTIFICATIONS, REPORTS, AND  
RECORDKEEPING AND SUSPICIOUS ACTIVITY REPORTING])

Dear Mr. Rhoades:

The U.S. Nuclear Regulatory Commission (NRC, the Commission) has approved the requested exemption from specific requirements of Title 10 of the *Code of Federal Regulations* (10 CFR), part 73, “Physical Protection of Plant and Materials,” subpart T, “Security Notifications, Reports, and Recordkeeping,” for Limerick Generating Station, Units 1 and 2 (Limerick), including the Limerick Independent Spent Fuel Storage Installation. This action is in response to the application submitted by Constellation Energy Generation, LLC (CEG, the licensee), dated October 13, 2023 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML23286A035), as supplemented by letter dated November 10, 2023 (ML23317A107), and email dated November 22, 2023 (ML23331A006). The application requested an exemption from the requirements of 10 CFR 73.1200, “Notification of physical security events,” paragraphs (a) through (t), 10 CFR 73.1205, “Written follow-up reports of physical security events,” paragraphs (a) through (e), 10 CFR 73.1210, “Recordkeeping of physical security events,” paragraphs (a) through (h), and 10 CFR 73.1215, “Suspicious activity reports,” paragraphs (a) through (f). This request also included an exemption from the current definitions for the terms “Contraband” and “Time of Discovery” in 10 CFR 73.2, “Definitions.”

On March 14, 2023, the NRC issued its notice in the *Federal Register* for the “Enhanced Weapons, Firearms Background Checks, and Security Event Notifications” (EWR) final rule (88 FR 15864). This final rule became effective April 13, 2023, with a compliance date of January 8, 2024.

The requirements for physical security event notifications, and the categories of physical security events and the timeframes by which the licensee must notify the NRC of these events, are set forth in 10 CFR 73.1200(a) through 10 CFR 73.1200(t).

The requirements for how licensees submit written follow-up reports following a licensee’s telephonic notification of a physical security event under 10 CFR 73.1200 are set forth in 10 CFR 73.1205(a) through 10 CFR 73.1205(e).

The requirements for recordkeeping of less significant physical security events and conditions adverse to security are set forth in 10 CFR 73.1210(a) through 10 CFR 73.1210(h).

The requirements for how licensees report suspicious activity to the NRC and other federal agencies within a specified time are set forth in 10 CFR 73.1215(a) through 10 CFR 73.1215(f).

As part of the EWR final rule, the NRC added the definitions for “Contraband” and “Time of Discovery” to 10 CFR 73.2, “Definitions,” to help clarify the physical event notification requirements.

### **Summary of CEG’s Basis for the Requested Exemption**

CEG is requesting an exemption for Limerick from the requirements in subpart T of the EWR final rule, as described above, that would defer CEG’s compliance with those provisions until December 31, 2024, or 180 days after publication of final regulatory guides (RGs), whichever is later. CEG is also requesting an exemption for Limerick from using the new definitions for the terms “Contraband” and “Time of Discovery” in 10 CFR 73.2, “Definitions,” until the later of December 31, 2024, or 180 days after the NRC’s publication of the final RGs.

CEG is requesting an exemption from these requirements for Limerick because of what it asserts are ambiguities and inconsistencies in both the final rule language and the supporting RGs. In support of the exemption request, CEG identified the following issues, among others, as ones that challenge its implementation for Limerick of the new subpart T, Reporting Requirements, and certain new definitions in 10 CFR 73.2:

- CEG stated that the introduction of the term “conditions adverse to security” within 10 CFR 73.1210 is undefined, and ambiguous, and will have implications for CEG’s corrective action program (CAP) that currently defines specific events, situations, or occurrences, including security items, that result in a “condition adverse to quality.”
- CEG stated that the new definitions of the terms “Contraband” and “Time of Discovery” in 10 CFR 73.2 expand on the existing definitions provided in NRC endorsed, Nuclear Energy Institute (NEI) 03-12, “Template for the Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, [and Independent Spent Fuel Storage Installation Security Program],” Revision 7 (ML11301A066), and Regulatory Guide (RG) 5.76, “Physical Protection Programs at Nuclear Power Reactors,” Revision 1 (non-publicly available). The application of these expanded definitions will require changes to the methods of compliance with the requirements for identifying “contraband” and “time of discovery.”
- CEG stated that the inconsistencies in RG 5.62, “Physical Security Event Notifications, Reports, and Records,” Revision 2, dated March 2023 (ML17131A285), associated with the implementation of 10 CFR 73.1200 for 15-minute and 4-hour notifications related to contraband, and 4-hour and 24-hour event notifications associated with the discovery that an authorized weapon is either lost or uncontrolled, creates the potential for confusion and human performance error.

CEG further states that due to these concerns it is not clear what it must do to implement certain rule requirements and bring Limerick into full compliance with the rule. CEG further states that requiring it to come into compliance without full clarity on key parts of the rule would require it to

make changes to its physical security plans and processes for Limerick twice – once to come into compliance with its own interpretation of the final rule (without the benefit of the revised guidance currently being developed by NRC), and again when the revised NRC guidance addressing the identified ambiguities and inconsistencies is issued.

Two examples of where CEG asserts this duplicative work will be required are:

- Revisions of associated procedures/processes, job aids, training materials and lesson plans that are used to describe and elaborate on reporting requirements.
- The re-training of impacted station personnel with updated information contained within the revised guidance documents.

CEG believes that the burden associated with this duplication of work is unnecessary while the NRC clarifies these ambiguities and inconsistencies and therefore affects efficient and effective implementation of the rule.

CEG also notes that it is in the process of implementing recent revisions to 10 CFR, part 26, “Fitness for Duty Programs” (87 FR 71422; November 22, 2022). CEG asserts that the cumulative effect of these rule changes is extremely significant on station resources, especially because certain changes impact the same organization on site. CEG accordingly asserts that the overlapping timeframe for implementation of these revised requirements, combined with the ambiguity and inconsistencies in the EWR final rule language and existing guidance, could result in unnecessary confusion and distraction that would detract from the current high level of assurance provided by the existing Limerick physical security program.

CEG stated that if the exemption is granted, it will continue to comply with the security event reporting requirements for Limerick as they existed prior to March 2023, consistent with its current NRC-approved security plan and its site security procedures. CEG will continue to implement its current CAP process that identifies conditions adverse to quality as they relate to the security program and items that are conditions adverse to regulatory compliance. Additionally, it will continue to use the definitions for the terms “Contraband” and “Discovery (time of)” embodied in the Limerick site security plan, consistent with how these terms are currently defined in RG 5.76, Revision 1. Consistent with the current Limerick site security plan, CEG will also implement the requirements for reporting the suspension of security measures that were in the (now reserved) 10 CFR 73.71 prior to March 2023. CEG will continue to implement the requirements in its Limerick site security plan as currently reviewed and approved by the NRC. Finally, CEG has committed to continue making voluntary reports of suspicious activities pending clarification of the EWR final rule.

### **NRC Staff Evaluation of the Exemption Request**

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.

CEG has advanced several bases in support of the exemption request for Limerick. For example, CEG, in their request, has identified certain examples in 10 CFR 73.1200, 10 CFR 73.1210, and 10 CFR 73.2 to support the technical basis for an exemption from the provisions of these requirements. CEG has not identified any specific ambiguities and

inconsistencies with respect to 10 CFR 73.1205 and 73.1215. The various reporting and event notification requirements in subpart T and the two definitions in 10 CFR 73.2 for which CEG seeks an exemption constitute an integrated framework for reporting and documenting security events, an approach which is both risk-informed and graded. Although CEG has identified only a small number of ambiguities or inconsistencies in 10 CFR 73.1200, 10 CFR 73.1210, and 10 CFR 73.2, it asserts that without clarification on how these ambiguities and inconsistencies will be resolved by the NRC, Limerick will have to update its security program, including procedures, processes, and training, to incorporate its understanding of what is required to come into compliance with the rule. CEG further asserts that once the NRC has implemented revisions to the rule and guidance to address these ambiguities and inconsistencies, Limerick will again have to revise its security program to incorporate those clarifications to ensure continued compliance with the rule. This would entail an unduly resource-intensive bifurcation of CEG's otherwise integrated process for coming into compliance with the rule. In particular, the updated 10 CFR 73.2 definitions of "Time of Discovery" and "Contraband" are a foundational and cross-cutting concept in CEG's program for implementing the updated notifications, reports, and recordkeeping requirements of revised 10 CFR 73.1200, 10 CFR 73.1205, 10 CFR 73.1210, and 10 CFR 73.1215. Accordingly, the exemption would enable CEG to efficiently consolidate into a single, systematic, process what would otherwise involve partial duplication of efforts to come into compliance with the rule. While not relying on all of CEG's claims in support of the exemption request and considering that the issuance of the targeted clarifications to the identified regulatory guidance is well underway, the NRC staff agrees with CEG that the requested exemption would avoid unnecessary resource burden and facilitate the effective and efficient implementation of the rule.

The NRC staff agrees that the requested duration for the exemption is appropriate for the licensee to review the revised NRC staff guidance, revise procedures, and to provide training to site personnel that implement the new graded approach for reporting and documenting security events and activities to the NRC and other federal agencies.

During that time, CEG will instead continue to implement its existing NRC-approved security plan for Limerick, which implements the NRC's security event reporting requirements that existed prior to the publication of the EWR final rule, and CEG will also continue making voluntary suspicious activity reports. Because of these actions by the licensee, the NRC staff agrees that CEG's measures, implemented until the later of December 31, 2024, or 180 days after the NRC's publication of the final RGs, will provide high assurance of adequate protection. The NRC staff notes that the proposed revision 3 to RG 5.62 was published for public comment as DG-5080, "Physical Security Event Notifications, Reports and Records," on October 27, 2023 (88 FR 73767), and proposed revision 1 to RG 5.87, "Suspicious Activity Reports Under 10 CFR, part 73," was published for public comment as DG-5082, "Suspicious Activity Reports," on October 27, 2023 (88 FR 73769). For these reasons, and as documented in the findings below, the NRC staff has determined that granting the exemption is appropriate.

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, in accordance with 10 CFR 73.5, the NRC staff finds that the exemption is authorized by law.

The NRC staff has also determined that CEG will maintain a security posture that continues to ensure safety and security at Limerick through the implementation of its current NRC-approved physical protection program using the reporting and recordkeeping requirements that existed prior to the publication of the EWR final rule and its continued voluntary reporting of suspicious

activity. Therefore, in accordance with 10 CFR 73.5, the NRC staff finds that granting the proposed exemption will not endanger life or property or the common defense and security.

Finally, based on the identified inconsistencies and ambiguities discussed above in the rule text and regulatory guidance, the NRC staff has determined that temporarily delaying compliance with the specified subset of 10 CFR, part 73, requirements will reduce unnecessary burden on site personnel and resources, while still facilitating the effective implementation of the EWR final rule. Therefore, the NRC staff finds that granting the proposed exemption is in the public interest.

### **Environmental Considerations**

The NRC's approval of the exemption to security requirements belongs to a category of actions that the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment. Specifically, the exemption is categorically excluded from further analysis under 10 CFR 51.22(c)(25).

Under 10 CFR 51.22(c)(25), the granting of an exemption from the requirements of any regulation of chapter 10 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: recordkeeping requirements; reporting requirements; inspection or surveillance requirements; equipment servicing or maintenance scheduling requirements; education, training, experience, qualification, requalification or other employment suitability requirements; safeguard plans, and materials control and accounting inventory scheduling requirements; scheduling requirements; surety, insurance or indemnity requirements; or other requirements of an administrative, managerial, or organizational nature.

The NRC staff has determined that the granting of the exemption request involves no significant hazards consideration because deferred compliance for the specific requirements described in the licensee's submittal, as supplemented, does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The exempted security regulations are unrelated to any operational restriction. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, and no significant increase in individual or cumulative public or occupational radiation exposure. The exempted regulations are not associated with construction, so there is no significant construction impact. The exempted regulations do not concern the source term (i.e., potential amount of radiation in an accident) nor mitigation. Thus, there is no significant increase in the potential for, or consequences of, a radiological accident. The requirements of 10 CFR 73.1200, 10 CFR 73.1205, 10 CFR 73.1210, and 10 CFR 73.1215, as described in the licensee's submittal, as supplemented, involve recordkeeping requirements, reporting requirements, safeguard plans, and other requirements of an administrative, managerial, or organizational nature.

Therefore, pursuant to 10 CFR 51.22(b) and (c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

### **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 the licensee's request for an exemption from the requirements of 10 CFR 73.1200(a) through (t), 10 CFR 73.1205(a) through (e), 10 CFR 73.1210(a) through (h), 10 CFR 73.1215(a) through (f), and the revised definitions for the terms "Contraband" and "Time of Discovery" in 10 CFR 73.2.

This exemption is effective from January 17, 2024, through December 31, 2024, or 180 days after publication of the final RGs (specifically, RG 5.62, Revision 3 and RG 5.87, Revision 1), whichever is later.

Sincerely,

Victor Cusumano, Acting Deputy Director  
Division of Operating Reactor Licensing  
Office of Nuclear Reactor Regulation

Docket Nos. 50-352, 50-353,  
and 72-065

cc: Listserv

SUBJECT: LIMERICK GENERATING STATION, UNITS NOS. 1 AND 2 – EXEMPTION FROM SELECT REQUIREMENTS OF 10 CFR PART 73 (EPID L-2023-LLE-0026 [SECURITY NOTIFICATIONS, REPORTS, AND RECORDKEEPING AND SUSPICIOUS ACTIVITY REPORTING]) DATED JANUARY 17, 2024

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