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L-XE-24-001
10 CFR 73.5

ATTN: Document Control Desk
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Prairie Island Nuclear Generating Plant, Units 1 and 2
Docket Nos. 50-282 and 50-306
Renewed Facility Operating License Nos. DPR-42 and DPR-60

Prairie Island Independent Spent Fuel Storage Installation
Docket No. 72-10
Materials License No. SNM-2506

Monticello Nuclear Generating Plant
Docket No. 50-263
Renewed Facility Operating License No. DPR-22

Supplement to Request for Exemption from Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Implementation

Reference: 1) NSPM letter to NRC, "Request for Exemption from Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Implementation," dated November 15, 2023 (ADAMS Accession Nos. ML23319A318 and ML23319A319)

On November 15, 2023, Northern States Power, a Minnesota corporation (NSPM), doing business as Xcel Energy, submitted a request for exemption from the 10 CFR 73, "Enhanced Weapons, Firearms Background Checks, and Security Event Notifications," final rule (Reference 1). This letter supplements that exemption request by replacing the Reference 1 enclosure in its entirety with the enclosure to this letter. Only the 10 CFR 2.390 markings (header and footer) were removed from the original enclosure; no other changes were made.

If you have any questions or require additional information, please contact Ronald Jacobson at (612) 330-6542 or ronald.g.jacobson@xcelenergy.com.

Summary of Commitments

This letter makes no new commitments and no revisions to existing commitments.

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A handwritten signature in black ink, appearing to read "Sara L. Scott". The signature is fluid and cursive, with a large loop at the end.

Sara L. Scott
Director, Nuclear Licensing and Regulatory Services
Northern States Power Company – Minnesota
Enclosure

cc: Administrator, Region III, USNRC
Project Manager, Monticello, USNRC
Project Manager, Prairie Island, USNRC
Resident Inspector, Monticello, USNRC
Resident Inspector, Prairie Island, USNRC

ENCLOSURE**Request for Exemption from Specific Requirements in the New 2023 Security Rule****A. BACKGROUND**

On March 14, 2023, the Nuclear Regulatory Commission (NRC) issued a Final Rule entitled “Enhanced Weapons, Firearms Background Checks, and Security Event Notifications,”¹ hereafter the “Enhanced Weapons Rule.” This final rule became effective April 13, 2023, with a compliance date of January 8, 2024. The final rule contains several new elements such as:

- New terminology and associated requirements covering “conditions adverse to security”
- New definitions of the terms “contraband” and “time of discovery” in 10 CFR 73.2
- Changes reporting requirements applicable to security events from:
 - 1-hour notifications and 24-hour recording of security events to 1-hour, 4-hour, 8-hour notifications, and 24-hour recording of security events
 - Codifies the accelerated call to the NRC from NRC Bulletin 2005-02 to a new 15-minute notification

Concurrently with the publication of the final rule, the NRC issued the following Regulatory Guides to support the implementation requirements set forth in the final rule:

- 5.62, “Physical Security Event Notifications, Reports, and Records,” Revision 2
- 5.86, “Enhanced Weapons Authority, Preemption Authority, and Firearms Background Checks,” Revision 0
- 5.87, “Suspicious Activity Reports,” Revision 0

During the August 23, 2023, public meeting, the NRC recognized there are ambiguities and inconsistencies contained by the final rule language and associated guidance. The discussed revision date for clarifying guidance publication was April 2024, which is 3 months after the compliance date of January 8, 2024. Additionally, the NRC recognized the need for rulemaking to address the issues with the final rule language.

Accordingly, NSPM is requesting an exemption from the 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.

¹ “Enhanced Weapons, Firearms Background Checks, and Security Event Notifications; Final rule and guidance,” 88 Fed. Reg. 15864 (March 14, 2023).

NSPM is requesting an exemption 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.

B. BASIS FOR EXEMPTION REQUEST

10 CFR 73.5 allows the Commission to grant exemptions from the requirements of Part 73 "as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest." As explained below, this exemption request meets the criteria provided in section 73.5.

NSPM has identified several issues in the final rule and the supporting Regulatory Guides that require clarification from the NRC in order for NSPM to successfully implement the requirements. As mentioned above, the NRC is currently developing a resolution for code language issues and addressing guidance revisions. The NRC plans to issue additional guidance in April 2024, 3 months after the compliance date of January 8, 2024. Without additional guidance, enforcement relief, and/or the approval of this exemption, it is likely that NSPM will need to make changes to physical security plans and processes twice – once to come into compliance with its own interpretation of the final rule (without the benefit of the additional guidance being developed by NRC), and again once the additional guidance is issued. The ambiguity and conflict created by the final rule language and existing guidance, which is described below, could result in unnecessary confusion and distraction that detract from the current high level of assurance provided by NSPM's existing physical security program for Monticello and Prairie Island. Thus, implementation of the final rule prior to issuance of additional clarifying guidance, at a minimum, is not in the best interest of the public. The following are several issues that have been identified as examples:

1. CONDITIONS ADVERSE TO SECURITY

The introduction of the term "conditions adverse to security" within 10 CFR 73.1210 is undefined, and ambiguous. NSPM has established, as required, a formal Corrective Action Program IAW 10 CFR Part 50 Appendix B, Criterion XVI. NEI 16-07, *Improving the Effectiveness of Issue Resolution to Enhance Safety and Efficiency*, provided recommended approaches to the industry to enhance corrective actions, and facilitate a better organizational focus on conditions affecting safety and reliability. As a result, NSPM has developed procedures/processes to determine conditions adverse to quality as it relates to the security organization, (e.g., Condition Adverse to Regulatory Compliance.)

- The NSPM fleet corrective action program procedure defines the specific events, situations or occurrences that result in a condition adverse to quality. Security-related items are included.

Given the robust nature of the corrective action program, the additional duplication of procedures and/or revision of procedures to accommodate a new term is unnecessary, adds burden, and provides no increased value, safety margin or improvements to security programs or the corrective action program.

2. DEFINITIONS IN 10 CFR 73.2

New definitions in § 73.2 expand existing definitions provided in NRC endorsed, 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 and RG 5.76, "Physical Protection Programs at Nuclear Power Reactors." NSPM has used the existing definitions to design its Security Plan and associated programs and procedures. Examples of the issues include:

- *Contraband*: Specifically, the *exempli gratia* or "e.g." parenthetical describing "other dangerous materials" as specifically including "disease causing agents" requires licensees to protect against circumstances beyond the current Design Basis Threat (DBT) as described in 10 CFR 73.1. The application of this expanded definition will require changes to NSPM's methods of compliance with the requirements of 10 CFR 73.55(g)(1)(ii)(B). Paragraphs (g)(1)(ii)(B) requires (emphasis added):

§ 73.55(g) *Access controls.*

(1) Consistent with the function of each barrier or barrier system, the licensee shall control personnel, vehicle, and material access, as applicable, at each access control point in accordance with the physical protection program design requirements of § 73.55(b).

(ii) Where vehicle barriers are established, the licensee shall:

(B) Search vehicles and materials for contraband or other items which could be used to commit radiological sabotage in accordance with paragraph (h) of this section.

§ 73.55(h) *Search programs.*

(1) The objective of the search program is to detect, deter, and prevent the introduction of firearms, explosives, incendiary devices, or other items which could be used to commit radiological sabotage. To accomplish this the licensee shall search individuals, vehicles, and materials consistent with the physical protection program design requirements in paragraph (b) of this section, and the function to be performed at each access control point or portal before granting access.

(2) Owner controlled area searches.

(iv) Vehicle searches must be accomplished through the use of equipment capable of detecting firearms, explosives, incendiary devices, or other items which could be used to commit radiological sabotage, or through visual and physical searches, or both, to ensure that all items are identified before granting access.

(3) Protected area searches. Licensees shall search all personnel, vehicles and materials requesting access to protected areas.

(i) The search for firearms, explosives, incendiary devices, or other items which could be used to commit radiological sabotage shall be accomplished through the use of equipment capable of detecting these items, or through visual and physical searches, or both, to ensure that all items are clearly identified before granting access to protected areas. The licensee shall subject all persons except official Federal, state, and local law enforcement personnel on official duty to these searches upon entry to the protected area. Armed security officers who are on duty and have exited the protected area may re-enter the protected area without being searched for firearms.

§ 73.55(g) uses the term contraband, while § 73.55(h) uses terminology consistent with that found in the definition of contraband in NEI 03-12 (and RG 5.76). The specific inclusion of “disease causing agents” in the new regulatory definition of contraband will require NSPM to modify its programs and procedures describing the methods of compliance with paragraph § 73.55(g). NSPM understands that the NRC is looking at potential resolutions for this issue, but until further guidance is issued, or rulemaking occurs, NSPM is unable to come into compliance with this requirement as written without making significant changes to its physical security program.

- *Time of Discovery*: Specifically, the term “cognizant individual” and “is considered anyone who, by position, experience, and/or training, is expected to understand that a particular condition or event adversely impacts security.” Currently, security plans incorporate the definition for Time of Discovery, that is found in NEI 03-12 and RG 5.76, being “a supervisor or manager makes a determination that a verified degradation of a security safeguards measure or a contingency situation exists,” to establish T=0 for a security related event.

The new definition expands the pool of personnel previously used by licensees to determine T=0 for an event, due to the undefined nature of “position, experience, and/or training.” Additionally, the broader nature and lower threshold for recognition of something that simply “adversely impacts security,” versus “recognition of verified degradation of a security safeguards measure or a contingency situation” contributes to the expansion of pool of personnel. NSPM is

confident, the term in NEI 03-12 and RG 5.76, is the appropriate threshold for T=0 for security related events.

The application of this expanded definition will require NSPM to expand current security programs to incorporate the expanded and revised training modules onsite for general plant employees, (potentially with INPO and the NANTeL course they facilitate), and the responsibility for implementation of the expanded training across a broad spectrum of personnel at the station.

3. REGULATORY GUIDES

Examples of clarification needed in the supporting Regulatory Guide 5.62, Revision 2, "Physical Security Event Notifications, Reports, and Records" include:

4-hour vs. 15-minute notification requirement:

- § 73.1200(e)(1)(iii) and (iv) requires a 4-hour notification for contraband attempted or actual introduction of contraband into a PA [protected area], VA [vital area], or MAA [material access area].
 - The definition of contraband contains the term "incendiaries".
- § 73.1200(a) required a 15-minute notification for hostile actions.
 - RG 5.62, Rev 2, Section 7.1, page 24, provides examples of hostile actions:
 - (4) The discovery of unauthorized explosive materials, incendiary materials, or an improvised explosive device within the licensee's site boundary.
- The code language requires a 4-hour notification for an incendiary device at or inside the PA, VA, or MAA. The reg guide drives licensee to a 15-minute notification for an incendiary device at the site boundary, which is further away from safety related equipment.

The notification conflict the regulatory guide introduced between a 15-minute and 4-hour notification is burdensome, confusing, and makes the consistency and success for this notification unpredictable. Station personnel are trained in referencing published Regulatory Guides, station procedures and guidance, and other industry documents, as a best practice, to support the accuracy of determination of notification events.

The inconsistency created by RG 5.62 unnecessarily creates the potential for confusion and human performance error.

4-hour notification vs. 24-hour recording of "lost or uncontrolled weapon":

- § 73.1200(e)(1)(v) requires a 4-hour notification for a lost or uncontrolled weapon.
- § 73.1210(f) requires recording within 24-hours "physical security events or conditions that decreases the effectiveness of the physical security program."

- RG 5.62, Rev 2, Section 18.2, page 38, provides examples of the “Recordable Events and Conditions Regarding Decreases in Effectiveness”, that 73.1210(f) requires. The regulatory guide includes an event involving the loss of control of an authorized security weapon within a PA, VA, MAA, or CAA.
- The conflict between the notification and recording of a lost or uncontrolled weapon only exists because of the regulatory guidance in RG 5.62. As a best practice, and to support accurate determination of notification events, station personnel are trained in referencing published Regulatory Guides, station procedures and guidance, and other industry documents. Additional clarity is needed in order to support the implementation of notifications and recordkeeping in a consistent and successful manner.

Malevolent intent discussion:

- 10 CFR 73.1200 only refers to the term “malevolent intent” in § 73.1200(q)(2) as *exempli gratia* or “e.g.” parenthetical describing a circumstance where a licensee may desire to retract a previous physical security event notification.
 - RG 5.62, Rev 2, Section 2, page 21, titled, “Malevolent Intent and Credible Bomb Threat Considerations,” states the NRC’s position that only government officials have the necessary resources and qualifications to determine whether malevolent intent was present in a security event.
 - During the May 2023 and August 2023 public meetings, the NRC was unable to consistently describe when licensees were capable of this determination, and when licensees were required to have government officials make this determination.
 - Within the “NRC Response to Public Comments”, ML16264A004,² comment K-21 contains the discussion regarding “credible”, and puts into context, the circumstances of the NRC’s position, as it relates to the determination of malevolent intent.
 - It is clear, that as of the publication date of March 2023, the discussion revolves around the 15-minute notification requirements, and not blanketly across all security related events.
- NSPM is aligned that in certain circumstances, external government agencies would be the most appropriate to determine malevolent intent, (e.g., credible bomb threat, credible threat). However, NSPM’s position on the capability to determine intent as it relates to identifying Human Performance errors, as well as determining Trustworthy and Reliability for Access purposes remains with NSPM.

² NRC Response to Public Comments, “Enhanced Weapons, Firearms Background Checks, and Security Event notifications Rule”, NRC-2011-0018; RIN 3150-AI49

- The lack of clarity of the scope and/or intent of when it is appropriate for external government officials to determine malevolent intent creates ambiguity. Final clarity is needed to prevent NSPM having to unnecessarily change security programs and procedures, such as access authorization, to incorporate a process to await investigation results from NRC's Office of Investigations (OI), the intelligence community, or a federal, State, or local law enforcement agency.

C. CONSIDERATIONS FOR EXEMPTION

As highlighted in the selected examples above, NSPM moving towards a compliance date of January 8, 2023, without full clarity on key parts of the final rule would result in an inadequate implementation. Unknown success path towards compliance with the final rule, as written, in current code language; along with the conflict and confusion the published, publicly available, stated positions of the NRC, are key elements for this request. NSPM would find themselves in a situation where the modification to security plans and procedures would be required at least twice, based on interpretation of this new rule. NSPM is requesting the following considerations be taken into account during review of this request:

- Monticello's and Prairie Island's current site security plan implements the requirements of 10 CFR 73.71, "Reporting of Safeguards Events," as effective prior to the Enhanced Weapons Rule for reporting the suspension of security measures.
- NSPM will continue to comply with security event reporting, as previously required in 10 CFR 73.71 and Appendix G to Part 73, "Reportable Safeguards Events."
- NSPM will use the definitions for the terms "Contraband" and "Discovery (time of)" in the Monticello and Prairie Island security plans consistent with how these terms are currently defined in Regulatory Guide 5.76, Revision 1, "Physical Protection Programs at Nuclear Power Reactors."
- NSPM maintains a formal corrective action program and has identified Conditions Adverse to Quality as they relate to security programs and items that are Conditions Adverse to Regulatory Compliance.
- NSPM is currently capable of making voluntary reports of suspicious activities, and this will not change in the interim until the new compliance date and allow for final revised regulatory guidance issuance.
- NSPM has been in the process of implementing the November 22, 2022, 10 CFR Part 26 Fitness for Duty Rule (87 FR 1422). The cumulative effect of multiple rule changes is extremely significant on station resources, especially when the multiple rules impact the same organization on site.
- The burden associated with rework is unnecessary while awaiting final clarity with publication of associated Regulatory Guides. Several examples of where rework 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.
 - Coordination of work management and resources to align with station outage schedule(s). NSPM is presently conducting one extended refueling outage until

early December for Prairie Island Unit 2. Prairie Island Unit 1 will undergo an extended refueling outage in the fall of 2024.

- The re-training of impacted station personnel with updated information contained within the revised guidance documents:
 - Security
 - Regulatory/Compliance
 - Emergency Response
 - Radiation Protection
 - Operations – Accredited Training Program, requiring the use of the Systematic Approach to Training process. Examples of elements that drive the number of available weeks to train operators within a year are:
 - NSPM normally conducts 5 to 9 training cycles per year per site.
 - Each cycle of training normally runs 6 weeks, based on the number of operating crews, and licensed operators we have; with one to two weeks between cycles.
 - NSPM is required to administer an exam cycle for our licensed operators each year.
 - NSPM is required to incorporate certain elements within our 2-year training cycle, that include outage applicable objectives (e.g., core changes, plant modifications, Lower Mode operations).

D. JUSTIFICATION FOR EXEMPTION

Based on NRC's projected timeline for completion of revision to the applicable Regulatory Guides associated with this final rule, NSPM is requesting a new compliance date of December 31, 2024, or 180 days after publication of final Regulatory Guides, whichever is later.

As stated above, NSPM will continue to implement the Monticello and Prairie Island Security Plans as documented. Since those have been reviewed and approved by the NRC, the NRC has deemed they provide reasonable assurance of safety and security. The delay in implementation of the final rule will not impact proper implementation of the current Security Plans and will ensure that the final rule is effectively implemented. Thus, granting of this exemption will not endanger the life or property or common defense and security.

Implementation of the final rule without further interface, clarity, and refined guidance may result in unintended consequences which could reduce the effectiveness of the current Security Plans. Therefore, it is in the public's interest that Monticello and Prairie Island security plans and associated procedures/processes comprehensively and accurately implement the regulation and guidance documents once resolution is obtained of identified issues.

The granting of this exemption would not violate the Atomic Energy Act, as the compliance date for the final rule is not required nor specified in the AEA as amended,

any provisions of the Commission's regulations, or any other legally binding requirements imposed by the Commission.

Thus, issuance of this exemption request would be consistent with 10 CFR 73.5 because it is "authorized by law and will not endanger life or property or the common defense and security and [is] otherwise in the public interest."

D. ENVIRONMENTAL ASSESSMENT

NSPM is requesting an exemption from the specific requirements for the 2023 Security Rule, "Enhanced Weapons, Firearms Background Checks, and Security Event Notifications," effective as of April 13, 2023. The following information is provided in support of an environmental assessment and finding of no significant impact for the proposed exemption. NSPM has determined that the exemption involves no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite; that there is no significant increase in individual or cumulative public or occupational radiation exposure; that there is no construction impact; and there is no significant increase in the potential for or consequences from a radiological accident. Accordingly, the proposed one-time exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of this proposed exemption request.