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**Darrin A. King,**

*Departmental Clearance Officer.*

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## NUCLEAR REGULATORY COMMISSION

[NRC-2008-0486]

### NRC Enforcement Policy: Extension of Discretion Period of Interim Enforcement Policy

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Policy statement: Revision.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is revising the NRC "Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fire Protection Issues" (Title 10 of the *Code of Federal Regulations* (10 CFR) 50.48 "Fire Protection"), which will allow a licensee the option to request an extended enforcement discretion period if they are pursuing transition to 10 CFR 50.48(c), "National Fire Protection Association Standard NFPA 805."

**DATES:** This revision is effective September 10, 2008. Please submit any comments on this revision to the Enforcement Policy on or before October 27, 2008.

**ADDRESSES:** You may submit comments by any one of the following methods. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

*Federal e-Rulemaking Portal:* Go to <http://www.regulations.gov> and search for documents filed under Docket ID [NRC-2008-0486]. Address questions about NRC dockets to Carol Gallagher, 301-415-5905; e-mail [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

*Mail comments to:* Michael T. Lesar, Chief, Rulemaking, Directives, and Editing Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

*Hand deliver comments to:* 11555 Rockville Pike, Rockville, MD 20852, between 7:30 a.m. and 4:15 p.m., on Federal workdays.

You can access publicly available documents related to this document using the following methods:

*NRC's Public Document Room (PDR):* The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

*NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdresource@nrc.gov](mailto:pdresource@nrc.gov).

The NRC maintains the current Enforcement Policy on its Web site at <http://www.nrc.gov>. Mouse over "Public Meetings and Involvement" on the far right, then select "Enforcement" from the drop-down menu. Under the bolded "Comments" section select "Enforcement Policy".

**FOR FURTHER INFORMATION CONTACT:**

Cynthia Carpenter, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, 301-415-2741, e-mail [Cynthia.Carpenter@nrc.gov](mailto:Cynthia.Carpenter@nrc.gov).

**SUPPLEMENTARY INFORMATION:** On June 16, 2004 (69 FR 33536), the NRC published a final rule in the **Federal Register** amending 10 CFR 50.48, "Fire Protection." This rule became effective July 16, 2004 and allows licensees to adopt 10 CFR 50.48(c), a risk-informed, performance-based alternative to their current fire protection requirements in 10 CFR 50.48(b). The NRC revised its Enforcement Policy (June 16, 2004; 69 FR 33684) to provide interim enforcement discretion during a "transition" period. The interim enforcement discretion policy includes provisions to address the noncompliance identified during the licensee's transition process and existing identified noncompliances.

The discretion period would start when the licensee informs the NRC of a transition start date in a Letter of Intent (LOI) to transition to the National Fire Protection Association Standard 805 (NFPA 805). The discretion period would remain in effect for up to two years for the licensee to submit to the NRC a License Amendment Request

(LAR) to transition to NFPA 805, and the discretion period would continue until the NRC dispositioned the LAR. Many licensees requested 3 or more years for the transition period. The basis for the extended discretion included the following: (1) The need for additional time to properly evaluate existing fire analysis; (2) a lack of resources; (3) the need for additional time to develop fire probabilistic risk assessments (PRAs); and (4) the need for additional time to use lessons learned from the pilot plants. On April 18, 2006 (71 FR 19905), the NRC revised the Interim Enforcement Policy to extend the enforcement discretion period from two to three years.

On February 2, 2007, the Nuclear Energy Institute (NEI) submitted a request for additional discretion for sites transitioning to NFPA 805 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML070460550). NEI stated that the extension of the enforcement discretion period would allow an orderly transition process.

NEI states transitioning licensees are compelled to complete portions of the transition in advance of the pilot plants due to the enforcement discretion deadline. This could result in creating substantial risk of rework and inconsistency among the transitioning licensees. The following issues formed the base for NEI's request that the staff reexamine the Interim Enforcement Policy:

(1) Timing of the pilots schedule versus the nonpilot plant discretion deadline.

(2) Delay of the industry fire PRA standard and the NEI peer review guidance.

(3) Limited fire PRA expertise available.

(4) Burden on NRC staff to conduct timely reviews of concurrent LARs.

The NRC is revising the Enforcement Policy to extend, on a case-by-case basis, the current 3-year enforcement discretion period. The NRC will grant additional time extensions depending on the progress the licensee has made in the transition effort. The additional period of discretion would end 6 months after the date of the safety evaluation approving the second pilot plant LAR review.

Nuclear safety is the first consideration in any request for additional enforcement discretion. NRC requires all transitioning licensees to fully maintain their approved fire protection program. Transitioning licensees must address all nonconforming conditions with adequate compensatory measures to

assure adequate fire safety. The NRC will continue to apply normal inspection and enforcement to all plants that are not actively transitioning to 10 CFR 50.48(c).

#### Paperwork Reduction Act

This policy statement does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). Existing requirements were approved by the Office of Management and Budget (OMB), approval number 3150-0136. The approved information collection requirements contained in this policy statement appear in section VII.C.

#### Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, collection of information, unless it displays a currently valid OMB control number.

#### Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

Accordingly, the NRC Enforcement Policy is amended to read as follows:

#### NRC Enforcement Policy

\* \* \* \* \*

#### Interim Enforcement Policies

\* \* \* \* \*

#### Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fire Protection Issues (10 CFR 50.48)

This section sets forth the interim enforcement policy that the U.S. Nuclear Regulatory Commission (NRC) will follow to exercise enforcement discretion for certain noncompliances of requirements in 10 CFR 50.48, "Fire protection," (or fire protection license conditions) that are identified as a result of the transition to a new risk-informed, performance-based fire protection approach included in paragraph (c) of 10 CFR 50.48 and for certain existing identified noncompliances that reasonably may be resolved by compliance with 10 CFR 50.48(c). Paragraph (c) allows reactor licensees to voluntarily comply with the risk informed, performance-based fire protection approaches in National Fire Protection Association Standard 805 (NFPA 805), "Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating

Plants," 2001 Edition (with limited exceptions stated in the rule language).

For those noncompliances that the NRC identifies during the licensee's transition process, this enforcement discretion policy will be in effect for up to 3 years from the date specified by the licensee in their letter of intent to adopt the requirements in 10 CFR 50.48(c). The enforcement discretion will continue to be in place, without interruption, until NRC approval of the license amendment request to transition to 10 CFR 50.48(c).

An additional period of enforcement discretion may be granted on a case-by-case basis, if a licensee has made substantial progress in its transition effort. This additional period of discretion, if granted, would end 6 months after the date of the safety evaluation approving the second pilot plant<sup>1</sup> LAR review.

The NRC will assess "substantial progress" based on accomplishment of tasks that are not resource-limited with respect to fire probabilistic risk assessment (PRA) technical expertise (e.g., classical fire protection transition, deterministic nuclear safety performance criteria transition, non-power operational transition, radioactive release transition, development of the NFPA 805 monitoring program, operator manual action transition to NFPA 805 recovery actions). In order for the NRC to adequately evaluate the transition progress, licensees that request enforcement discretion beyond the three years currently available should make their request to the NRC in writing at least 3 months before the expiration of the 3-year discretion period and compile or submit the following information:

- Compile, for on-site NRC audit/inspection, a list of all fire protection-related noncompliances and the related compensatory measures for those noncompliances.
- Document, for onsite NRC audit/inspection, that each Operator Manual Action put in place as compensatory measures are feasible and reliable, in accordance with staff provided guidance in Regulatory Issue Summary 2005-07, "Compensatory Measures to Satisfy the Fire Protection Program Requirements."
- Submit a description of the physical modifications performed, if any, to address existing risk-significant fire protection issues.

<sup>1</sup> The NRC accepted the request from both Duke Power (ML051080005) and Progress Energy (ML052140391) to allow Oconee Nuclear Power Station and Shearon Harris Nuclear Power Station respectively, to become pilot NPFA 805 plants.

• Submit a status report of the transition, including a schedule of milestones for completing the fire PRA. The status report should be broken down into the following major areas:

- Classical fire protection transition (in accordance with NFPA 805 Chapter 3).
- Nuclear Safety Performance Criteria transition (in accordance with NFPA 805 chapters 1, 2 and 4).
- Nonpower operational transitions.
- NFPA 805 monitoring program.

If the NRC determines that a licensee has not made sufficient progress during the transition to NFPA 805, the NRC will deny the request for an extension of enforcement discretion.

If, after submitting the letter of intent to comply with 10 CFR 50.48(c) and before submitting the license amendment request, the licensee decides not to complete the transition to 10 CFR 50.48(c), the licensee must submit a letter stating its intent to retain its existing license basis and withdrawing its letter of intent to comply with 10 CFR 50.48(c). After the licensee's withdrawal from the transition process, the staff, as a matter of practice, will not take enforcement action against any noncompliance that the licensee corrected during the transition process and will on a case-by-case basis, consider refraining from taking action if reasonable and timely corrective actions are in progress (e.g., an exemption has been submitted for NRC review). Noncompliances that the licensee has not corrected, as well as noncompliances identified after the date of the above withdrawal letter, will be dispositioned in accordance with normal enforcement practices.

#### A. Noncompliances Identified During the Licensee's Transition Process

Under this interim enforcement policy, enforcement action normally will not be taken for a violation of 10 CFR 50.48(b) (or the requirements in a fire protection license condition) involving a problem such as in engineering, design, implementing procedures, or installation, if the violation is documented in an inspection report and it meets all of the following criteria:

- (1) It was licensee-identified, as a result of its voluntary initiative to adopt the risk-informed, performance-based fire protection program included under 10 CFR 50.48(c) or, if the NRC identifies the violation, it was likely in the NRC staff's view that the licensee would have identified the violation in light of the defined scope, thoroughness, and schedule of the licensee's transition to 10 CFR 50.48(c) provided the schedule

reasonably provides for completion of the transition within 3 years of the date specified by the licensee in their letter of intent to implement 10 CFR 50.48(c) or other period granted by NRC;

(2) It was corrected or will be corrected as a result of completing the transition to 10 CFR 50.48(c). Also, immediate corrective action and/or compensatory measures are taken within a reasonable time commensurate with the risk significance of the issue following identification (this action should involve expanding the initiative, as necessary, to identify other issues caused by similar root causes);

(3) It was not likely to have been previously identified by routine licensee efforts such as normal surveillance or quality assurance (QA) activities; and

(4) It was not willful.

The NRC may take enforcement action when these conditions are not met or when a violation that is associated with a finding of high safety significance is identified.

While the NRC may exercise discretion for violations meeting the required criteria where the licensee failed to make a required report to the NRC, a separate enforcement action will normally be issued for the licensee's failure to make a required report.

#### *B. Existing Identified Noncompliances*

In addition, licensees may have existing identified noncompliances that could reasonably be corrected under 10 CFR 50.48(c). For these noncompliances, the NRC is providing enforcement discretion for the implementation of corrective actions until the licensee has transitioned to 10 CFR 50.48(c) provided that the noncompliances meet all of the following criteria:

(1) The licensee has entered the noncompliance into their corrective action program and implemented appropriate compensatory measures;

(2) The noncompliance is not associated with a finding that the Reactor Oversight Process Significance Determination Process would evaluate as Red, or it would not be categorized at Severity Level I;

(3) It was not willful; and

(4) The licensee submits a letter of intent by December 31, 2005, stating its intent to transition to 10 CFR 50.48(c).

After December 31, 2005, as addressed in (4) above, this enforcement discretion for implementation of corrective actions for existing identified noncompliances will not be available and the requirements of 10 CFR 50.48(b) (and any other requirements in fire protection license conditions) will be enforced in accordance with normal

enforcement practices. However, licensees that submit letters of intent to transition to 10 CFR 50.48(c) with existing noncompliances will have the option to implement corrective actions in accordance with the new performance-based regulation. All other elements of the assessment and enforcement process will be exercised even if the licensee submits its letter of intent before the NRC issues its enforcement action for existing noncompliances.

Dated at Rockville, Maryland, this 4th day of September, 2008.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. E8-20972 Filed 9-9-08; 8:45 am]

**BILLING CODE 7590-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Investment Company Act Release No. 28375; 812-13526]**

### **Phoenix Equity Trust, et al.; Notice of Application**

September 3, 2008.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act.

**SUMMARY OF APPLICATION:** The requested order would permit certain registered open-end management investment companies to enter into and materially amend subadvisory agreements without shareholder approval.

**APPLICANTS:** Phoenix Equity Trust, Phoenix Insight Funds Trust, Phoenix Institutional Mutual Funds, Phoenix Opportunities Trust (the "Companies") and Phoenix Investment Counsel, Inc. (the "Advisor") (collectively, with the Companies, "Applicants").

**FILING DATES:** The application was filed on April 23, 2008, and amended on September 2, 2008.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 26, 2008 and should be accompanied by proof of service on applicants, in the form of an

affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 100 F Street, NE., Washington, DC 20549-1090. Applicants, One American Row, P.O. Box 5056, Hartford, CT 06102-5056.

**FOR FURTHER INFORMATION CONTACT:** Barbara T. Heussler, Senior Counsel at (202) 551-6990, or Mary Kay Frech, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549-1520 (telephone (202) 551-5850).

#### **Applicants' Representations**

1. The Companies are open-end management investment companies registered under the Act. The Companies, except Phoenix Insight Funds Trust, are organized as statutory trusts under Delaware law. Phoenix Insight Funds Trust is organized as a Massachusetts business trust under Massachusetts law. The Companies presently are comprised of fifty-three separate series (each, a "Fund" and collectively, the "Funds") each of which has its own investment objectives, policies, and restrictions.<sup>1</sup>

2. The Advisor, a Massachusetts corporation, is registered under the Investment Advisers Act of 1940 ("Advisers Act") and serves as investment adviser to the Funds that use

<sup>1</sup> Applicants also request relief with respect to current or future series of the Companies and any other registered open-end management investment companies and their series that: (a) Are advised by the Advisor or any entity controlling, controlled by or under common control with the Advisor; (b) use the management structure described in the application; and (c) comply with the terms and conditions of the application ("Future Funds," included in the term "Funds"). Any existing entity that currently intends to rely on the requested relief is named as an Applicant. If a Fund has the name of any Subadvisor (as defined below) in the Fund's name, the Fund's name will be preceded by the name of the Advisor (such as "Phoenix," which is the present identifying name the Advisor uses in conducting its business) or the name of the entity controlling, controlled by, or under common control with the Advisor that serves as the primary adviser to the Fund.