

**NUCLEAR REGULATORY
COMMISSION**

[Docket Nos. 50–348 and 50–364]

**Southern Nuclear Operating Company;
Joseph M. Farley Nuclear Power Plant,
Units 1 and 2; Exemption****1.0 Background**

The Southern Nuclear Operating Company (SNC or the licensee) is the holder of Facility Operating License Nos. NPF–2 and NPF–8 that authorizes operation of Joseph M. Farley Nuclear Power Plant (FNP), Units 1 and 2. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors located in Houston County, Alabama.

2.0 Request/Action

Section IV.F.2.b and c of Appendix E, to Title 10 of the Code of Federal Regulations (10 CFR) Part 50 requires the licensee at each site to conduct an exercise of its onsite emergency plan and of its offsite emergency plans biennially with full participation by each offsite authority having a role under the plan. During such biennial full participation exercises, the NRC evaluates onsite and the Federal Emergency Management Agency (FEMA) evaluates offsite emergency preparedness activities, including interaction with the various State and local emergency management agencies (EMA). SNC successfully conducted a full-participation exercise at FNP during the week of August 21, 2002.

The licensee had scheduled a full participation plume exposure pathway exercise for August 18, 2004, however, due to Hurricane Charley, Alabama EMA and FEMA were unable to support the exercise. Under the current regulations, the licensee would have had until December 31, 2004, to complete their next full-participation exercise. The licensee will conduct a Federally observed full-participation emergency exercise August 24–25, 2005. Future full-participation exercises will be scheduled biennially from the year 2004.

By letter dated December 13, 2004, the licensee requested an exemption from Section IV.F.2.e of Appendix E to 10 CFR part 50 regarding the full participation by each offsite authority having a role under the plan. The NRC staff determined that the requirements of Section IV.F.2.e are not applicable to the circumstances of the licensee's

request and, accordingly, no exemption from those requirements is being granted. However, the NRC staff has determined that the requirements of Appendix E to 10 CFR part 50, Sections IV.F.2.b and 2.c are applicable to the circumstances of the licensee's request and that an exemption from those requirements is appropriate.

3.0 Discussion

The Commission, pursuant to 10 CFR 50.12(a)(1), may grant exemptions from the requirements of 10 CFR part 50 that are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security. The Commission, however, pursuant to 10 CFR 50.12(a)(2), will not consider granting an exemption unless special circumstances are present. Under 10 CFR 50.12(a)(2)(ii), special circumstances are present when application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. Under 10 CFR 50.12(a)(2)(v), special circumstances are present whenever the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation.

The underlying purpose for conducting a biennial full-participation exercise is to ensure that emergency organization personnel are familiar with their duties and to test the adequacy of emergency plans. In order to accommodate the scheduling of full participation exercises, the NRC has allowed licensees to schedule the exercises at any time during the calendar biennium. Conducting the FNP full-participation exercise in calendar year 2005 places the exercise past the previously scheduled biennial calendar year of 2004.

Since the last full-participation exercise conducted at FNP on August 21, 2002, FNP has conducted two annual, Full Scale Plume Phase exercises on August 27, 2003, and July 28, 2004. In addition, the licensee conducted an offhour/unannounced exercise on September 23, 2003. Six other drills were also conducted. The NRC staff considers the intent of this requirement is met by having conducted these series of exercises and drills. The NRC staff considers that these measures are adequate to maintain an acceptable level of emergency preparedness during this period, satisfying the underlying purpose of the rule. Therefore, the

special circumstances of 10 CFR 50.12(a)(2)(ii) are satisfied.

Only temporary relief from the regulation is provided by the requested exemption since FNP will resume their normal biennial exercise schedule in 2006. The licensee has made a good faith effort to comply with the regulation. The exemption is being sought by the licensee in response to a request by Alabama EMA and FEMA to postpone the exercise. Alabama EMA and FEMA were unable to support the original schedule for the exercise due to a series of severe weather events. FEMA stated that they support the newly scheduled August 24–25, 2005, exercise in a letter to the licensee dated October 21, 2004.

The NRC staff, having considered the schedule and resource issues with those agencies that participate in and evaluate the offsite portion of the full-participation exercises, concludes that the licensee made a good faith effort to meet the requirements of the regulation. The NRC staff, therefore, concludes that the exemption request meets the special circumstances of 10 CFR 50.12(a)(2)(v) and should be granted.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants SNC an exemption from the requirements of 10 CFR part 50, Appendix E, Section IV.F.2.b and c for FNP, Units 1 and 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (70 FR 19107).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 13th day of April 2005.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

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