

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50–382]

### Entergy Operations, Inc., Waterford Steam Electric Station, Unit 3; Notice of Consideration of Approval of Transfer of Facility Operating License and Materials License and Conforming Amendment and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an order under section 50.80 of Title 10 of the Code of Federal Regulations (10 CFR), approving the transfer of control of Facility Operating License and Materials License No. NPF–38 for Waterford Steam Electric Station, Unit 3 (Waterford 3). The transfer is associated with the restructuring of Entergy Louisiana, Inc. (ELI), from a Louisiana corporation to a Texas limited liability company, Entergy Louisiana, LLC (ELL), Entergy Operations Inc. (EOI), the current operators of Waterford 3, will continue to operate the plant. The Commission is further considering amending the license for administrative purposes to reflect the proposed transfer, including removing references to ELI in the license.

ELI is the owner of Waterford 3, which is operated by EOI. Both ELI and EOI are direct subsidiaries of Entergy Corporation. ELI is currently a Louisiana corporation. Under the proposed restructuring, ELI will become a Texas corporation (“Holdings”) and will form ELL, which will be a Texas limited liability company. Holdings will remain a subsidiary of Entergy Corporation which will own all the common membership interests in ELL. All of the common stock and preferred stock of ELI will continue to be outstanding and to be owned by the same stockholders with the same ownership rights and interests as those stockholders had immediately before the restructuring.

ELL will assume all of the regulated utility obligations of ELI, along with the property and other assets of ELI that are used to provide retail and wholesale electric service to ELI’s customers. ELL’s retail utility operations will be subject to the jurisdiction of the Louisiana Public Service Commission (LPSC) to the same extent that the LPSC currently possesses jurisdiction over ELI’s retail utility operations. ELL will succeed to and assume all of ELI’s jurisdictional tariffs, rate schedules, and service agreements, and provide electric service to ELI’s customers without interruption.

EOI operates Waterford 3 pursuant to an Operating Agreement with ELI. EOI will continue to operate Waterford 3 and the current Operating Agreement will be amended to reflect the new owner of the plant. EOI will not be affected by the restructuring.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission’s regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days from the date of publication of this notice, any person whose interest may be affected by the Commission’s action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission’s action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission’s rules of practice set forth in Subpart C “Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory

Hearings,” of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)-(viii).

Requests for a hearing and petitions for leave to intervene should be served upon David A. Repka, Esq., Winston & Stawn, LLP, 1700 K Street, NW., Washington, DC 20006–3817; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.302 and 2.305.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated July 20, 2005, available for public inspection at the Commission’s Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System’s (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to

ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland this 6th day of October, 2005.

For the Nuclear Regulatory Commission.

**Nageswaran Kalyanam,**

*Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-255]

### Nuclear Management Company, LLC, Palisades Plant; Exemption

#### 1.0 Background

Nuclear Management Company, LLC (NMC) is the holder of Facility Operating License No. DPR-20, which authorizes operation of the Palisades Nuclear Plant (PNP). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC or Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor located in VanBuren County in Michigan.

#### 2.0 Request/Action

Title 10 of the Code of Federal Regulations 10 CFR part 50, Section 50.68(b)(1) specifies requirements for handling and storing spent fuel assemblies during cask loading, unloading, and handling operations. Section 50.68(b)(1) sets forth the following requirement that must be met, in lieu of a monitoring system capable of detecting criticality events:

Plant procedures shall prohibit the handling and storage at any one time of more fuel assemblies than have been determined to be safely subcritical under the most adverse moderation conditions feasible by unborated water.

NMC is unable to satisfy the above requirement for handling the 10 CFR part 72 licensed contents of the Transnuclear (TN) NUHOMS®-32PT storage system. Section 50.12(a) allows licensees to apply for an exemption from the requirements of 10 CFR part 50, if special circumstances are demonstrated. NMC's letter of June 21, as supplemented August 25, 2005, requested a license exemption from the

requirements of 10 CFR, part 50, Section 50.68(b)(1) for handling and storing spent fuel assemblies during cask loading, unloading, and handling operations for PNP. NMC stated in its letters that complying with 10 CFR 50.68(b)(1) is not necessary for handling the 10 CFR part 72 licensed contents of the cask system to achieve the underlying purpose of the rule. Additionally, NMC contends that complying with the rule in this case will result in undue hardship.

#### 3.0 Discussion

Pursuant to 10 CFR 50.12, "Specific Exemption," the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. These circumstances include the special circumstance listed in 10 CFR 50.12(a)(2)(iii), where "Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated."

In its exemption supplement of August 25, 2005, NMC provided a justification for satisfying the hardship special circumstance. The staff agrees with NMC that due to the short duration between the March 23, 2005, issuance of Regulatory Issue Summary (RIS) 2005-05, "Regulatory Issues Regarding Criticality Analyses for Spent Fuel Pools and Independent Spent Fuel Storage Installations" (ADAMS ML043500532), and the scheduled October 2005 cask loading campaign at PNP, insufficient time exists for NMC to perform the required analyses necessary to demonstrate compliance with 10 CFR 50.68. RIS 2005-05 identified an acceptable methodology for demonstrating compliance with the 10 CFR 50.68(b)(1) requirements during cask loading, unloading, and handling operations in pressurized water reactor SFPs. The staff has determined that a hardship claim may be acceptable for licensees that have previously scheduled loading campaigns commencing before March 31, 2006 (1 year after the issuance of the RIS). Therefore, the staff concludes that pursuant to 10 CFR 50.12(a)(2)(iii), NMC has provided sufficient justification to support a conclusion that undue hardship would occur if NMC were required to postpone its scheduled cask-

loading campaign until it could comply with 10 CFR 50.68.

However, since NMC's justification is based on the time needed to perform the necessary analyses, the staff has determined that NMC must comply with the regulations within an appropriate amount of time. In its exemption supplement, NMC proposed that the exemption remain valid until July 31, 2006. This will provide enough time for NMC to perform the necessary analyses and submit a license amendment request (LAR) to comply with 10 CFR 50.68. If NMC submits an LAR by July 31, 2006, this exemption will remain in effect until such time as the NRC staff either approves or denies the LAR. In this case, the NRC staff finds it acceptable to leave the exemption in effect because it will allow NMC to unload any previously loaded cask should it become necessary. However, if NMC does not submit a license amendment by July 31, 2006, this exemption will expire, and NMC will not be able to load, unload, or handle dry shielded canisters (DSCs) in the spent fuel pool (SFP). In its exemption supplement, NMC committed to complete supporting criticality analyses and submit a LAR to allow credit for burnup to meet the requirements of 10 CFR 50.68(b)(1) in July 2006 or earlier.

The NRC staff also evaluated NMC's request to determine if NMC has provided reasonable assurance that it can conduct the proposed cask loading, unloading, and handling activities in a safe and effective manner. PNP's Technical Specifications (TSs) currently permit NMC to store spent fuel assemblies in high-density storage racks in its SFP. In accordance with the provisions of 10 CFR 50.68(b)(4), NMC takes credit for soluble boron for criticality control, and ensures that the effective multiplication factor ( $k_{\text{eff}}$ ) of the SFP does not exceed 0.95 if flooded with borated water. Section 50.68(b)(4) also requires that if credit is taken for soluble boron, the  $k_{\text{eff}}$  must remain below 1.0 (subcritical) if flooded with unborated water. However, NMC is unable to satisfy the requirement to maintain the  $k_{\text{eff}}$  below 1.0 with unborated water at all times, which is also the requirement of 10 CFR 50.68(b)(1). Therefore, NMC's request for exemption from 10 CFR 50.68(b)(1) proposes to permit NMC to perform spent fuel loading, unloading, and handling operations related to dry cask storage without being subcritical under the most adverse moderation conditions feasible by unborated water.

Appendix A, "General Design Criteria (GDC) for Nuclear Power Plants," of 10 CFR, part 50, lists the minimum design