

Assessment (EA) in support of this exemption. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

### Environmental Assessment

#### *Identification of the Proposed Action*

The proposed action would allow SCE&G to use Optimized ZIRLO™, an advanced alloy fuel cladding material for pressurized-water reactors. The proposed action is in accordance with the licensee's application dated June 9, 2009 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML091620072).

#### *The Need for the Proposed Action*

The proposed action is needed so that SCE&G can use Optimized ZIRLO™, an advanced alloy for fuel rod cladding and other assembly structural components at the VCSNS.

Section 50.46 of 10 CFR and 10 CFR part 50, appendix K, make no provisions for use of fuel rods clad in a material other than zircaloy or ZIRLO™. Since the chemical composition of the Optimized ZIRLO™ alloy differs from the specifications for zircaloy or ZIRLO, a plant-specific exemption is required to allow the use of the Optimized ZIRLO™ alloy as a cladding material or in other assembly structural components at the VCSNS.

#### *Environmental Impacts of the Proposed Action*

The NRC has completed its environmental assessment of the proposed exemption. The staff has concluded that the proposed action to approve the use of an additional fuel rod cladding material would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring.

The proposed action would not result in an increased radiological hazard beyond those previously analyzed in the Final Environmental Statement for the Virgil C. Summer Nuclear Station, Unit No. 1, NUREG-0719, dated May 1981 (ADAMS Accession No. ML072750234) and the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, NUREG-1437, Supplement 15, dated February 2004 (ADAMS Accession No. ML040540718). There will be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed exemption.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Steven's Act are expected. There are no impacts to the air or ambient air quality.

There are no impacts to historical and cultural resources. There would be no impact to socioeconomic resources. Therefore, no changes to or different types of non-radiological environmental impacts are expected as a result of the proposed exemption.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action. The NRC staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation, if granted.

#### *Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

#### *Alternative Use of Resources*

The action does not involve the use of any different resources than those considered in the Final Environmental Statement for the Virgil C. Summer Nuclear Station, Unit No. 1, NUREG-0719, dated May 1981 (ADAMS Accession No. ML072750234) and the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, NUREG-1437, Supplement 15, dated February 2004 (ADAMS Accession No. ML040540718).

#### *Agencies and Persons Consulted*

In accordance with its stated policy, on January 11, 2010, the staff consulted with the South Carolina State official, Susan Jenkins of the South Carolina Department of Health and Environmental Control, regarding the environmental impact of the proposed action. The State official had no comments.

#### *Finding of No Significant Impact*

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

#### Further Information

Documents related to this action, including the application for an exemption and license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the document related to this notice, "License Amendment Request for Use of Optimized Zirlo™ Fuel Rod Cladding," dated June 9, 2009, is ML091620072. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

The document may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 24th day of February 2010.

For the Nuclear Regulatory Commission.

#### **Robert E. Martin,**

*Senior Project Manager, Plant Licensing Branch II-1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

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### **NUCLEAR REGULATORY COMMISSION**

**[Docket Nos. 50-321 and 50-366; NRC-2010-0024]**

#### **Southern Nuclear Operating Company, Inc.; Edwin I. Hatch Nuclear Plant, Units 1 and 2; Exemption**

##### **1.0 Background**

Southern Nuclear Operating Company, Inc. (SNC, the licensee), is the holder of Renewed Facility Operating License Nos. DPR-57 and

NPF-5, which authorizes operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2 (HNP). The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now, or hereafter, in effect.

The facility consists of two boiling-water reactors located in Appling County, Georgia.

## 2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR), Part 73, "Physical protection of plants and materials," Section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to 10 CFR 73.55 published on March 27, 2009, establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001, and implemented by licensees. In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post September 11, 2001, security orders. It is from one requirement of these new requirements that HNP now seeks an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have already been or will be implemented by the licensee by March 31, 2010.

By letter dated November 6, 2009, as supplemented by letter dated November 20, 2009, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's letters contain proprietary information and, accordingly, those portions are not available to the public. The licensee has requested an exemption from the March 31, 2010, compliance date stating that a number of issues will present a significant challenge to timely completion of the project related to a specific requirement in 10 CFR Part 73. Specifically, the request is to extend the compliance date for one specific requirement from the current March 31, 2010, deadline to December 6, 2010. Being granted this exemption for the one item will allow the licensee to complete the

modifications designed to update equipment and incorporate state-of-the-art technology to meet the noted regulatory requirement.

## 3.0 Discussion of Part 73 Schedule Exemptions From the March 31, 2010, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR Part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.'" Pursuant to 10 CFR 73.5, 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, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

NRC approval of this exemption would; as noted above, allow an extension from March 31, 2010, to December 6, 2010, for the implementation date for one specific requirement of the new rule. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final rule provided to the Commission (SECY-08-0099 dated July 9, 2008), the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to achieve full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site specific analyses to determine what changes were necessary to implement the rule's requirements, and that changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a generic industry request to extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date

(Reference: June 4, 2009, letter from R.W. Borchardt, NRC, to M.S. Fertel, Nuclear Energy Institute). The licensee's request for an exemption is therefore consistent with the approach set forth by the Commission as discussed in the June 4, 2009, letter.

## HNP Schedule Exemption Request

The licensee provided detailed information in its letter dated November 6, 2009, as supplemented November 20, 2009, requesting an exemption. It describes a comprehensive plan to install equipment related to a certain requirement in the new Part 73 rule and provides a timeline for achieving full compliance with the new regulation. The submittals contain proprietary information regarding the site security plan, details of the specific requirement of the regulation for which the site cannot be in compliance by the March 31, 2010, deadline and why, the required changes to the site's security configuration, and a timeline with critical path activities that will bring the licensee into full compliance by December 6, 2010. The timeline provides dates indicating (1) when various phases of the project begin and end (*i.e.*, design, field construction), (2) outages scheduled for each unit, and (3) when critical equipment will be ordered, installed, tested and become operational.

Notwithstanding the schedular exemption for this limited requirement, the licensee will continue to be in compliance with all other applicable physical security requirements as described in 10 CFR 73.55 and reflected in its current NRC approved physical security program. By December 6, 2010, HNP will be in full compliance with all the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

## 4.0 Conclusion for Part 73 Schedule Exemption Request

The NRC staff has reviewed the licensee's submittals and concludes that the licensee has provided adequate justification for its request for an extension of the compliance date to December 6, 2010, with regard to a specific requirement of 10 CFR 73.55.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," an exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption.

The NRC staff has determined that the long-term benefits that will be realized

when the HNP equipment installation is complete justifies extending the full compliance date with regard to the specific requirement of 10 CFR 73.55. The security measure, that HNP needs additional time to implement, is a new requirement imposed by the March 27, 2009, amendments to 10 CFR 73.55, and is in addition to those required by the security orders issued in response to the events of September 11, 2001.

Therefore, it is concluded that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption from the March 31, 2010, implementation deadline for the requirement specified in the SNC letter dated November 6, 2009, as supplemented November 20, 2009, the licensee is required to be in full compliance by December 6, 2010. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (*i.e.*, 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 3761; dated January 22, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 24th day of February 2010.

For the Nuclear Regulatory Commission.

**Allen G. Howe,**

*Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

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## **NUCLEAR REGULATORY COMMISSION**

[Docket Nos. 50-424 and 50-425; NRC-2010-0023]

### **Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 1 and 2; Exemption**

#### **1.0 Background**

Southern Nuclear Operating Company, Inc. (SNC, the licensee), is the holder of Renewed Facility Operating License Nos. NPF-68 and NPF-81, which authorizes operation of the Vogtle Electric Generating Plant, Units 1 and 2 (VEGP). The licenses

provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect. The facility consists of two pressurized-water reactors located in Burke County, Georgia.

#### **2.0 Request/Action**

Title 10 of the *Code of Federal Regulations* (10 CFR), Part 73, "Physical protection of plants and materials," Section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to 10 CFR 73.55 published on March 27, 2009 establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001, and implemented by licensees. In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post September 11, 2001, security orders. It is from one requirement of these new requirements that VEGP now seeks an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have already been or will be implemented by the licensee by March 31, 2010.

By letter dated November 6, 2009, as supplemented by letter dated November 20, 2009, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's letters contain proprietary information and, accordingly, those portions are not available to the public. The licensee has requested an exemption from the March 31, 2010, compliance date stating that a number of issues will present a significant challenge to timely completion of the project related to a specific requirement in 10 CFR Part 73. Specifically, the request is to extend the compliance date for one specific requirement from the current March 31, 2010, deadline to September 27, 2010. Being granted this exemption for the one item will allow the licensee to complete the modifications designed to update equipment and incorporate state-of-the-

art technology to meet the noted regulatory requirement.

#### **3.0 Discussion of Part 73 Schedule Exemptions From the March 31, 2010, Full Implementation Date**

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR Part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.'" Pursuant to 10 CFR 73.5, 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, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

NRC approval of this exemption would; as noted above, allow an extension from March 31, 2010, to September 27, 2010, for the implementation date for one specific requirement of the new rule. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final rule provided to the Commission (SECY-08-0099 dated July 9, 2008), the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to achieve full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site specific analyses to determine what changes were necessary to implement the rule's requirements, and that changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a generic industry request to extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date (Reference: June 4, 2009, letter from R.W. Borchardt, NRC, to M.S. Fertel,