

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 No. 50-400; NRC-2010-0020]

### Carolina Power & Light Company, Shearon Harris Nuclear Power Plant, Unit 1; Exemption

#### 1.0 Background

Carolina Power & Light Company (the licensee), now doing business as Progress Energy Carolinas, Inc. (PEC), is the holder of Renewed Facility Operating License No. NPF-63, which authorizes operation of the Shearon Harris Nuclear Power Plant, Unit 1 (HNP). The license provides, 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 one pressurized water reactor located in New Hill, North Carolina.

#### 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 the 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 three 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 30, 2009, as supplemented by letter dated December 16, 2009, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific Exemptions." Attachment 1 to the licensee's November 30, 2009, letter, as well as the December 16, 2009, letter in its entirety, contain security-related information and, accordingly, are not available to the public. The licensee has requested an exemption from the March 31, 2010, compliance date stating that it must complete a number of significant physical modifications to the current site security configuration before all requirements of 10 CFR part 73 can be met. Specifically, the request is to extend the compliance date for one requirement from the current March 31, 2010, deadline to July 30, 2010, and to extend the compliance date for two additional requirements to December 15, 2010. Being granted this exemption for the three items would allow the licensee to complete the modifications designed to update aging equipment and incorporate state-of-the-art technology to meet the regulatory requirements.

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

The regulation in 10 CFR 73.55(a)(1) states: "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, as noted above, would allow an extension from March 31, 2010, until July 30, 2010, for one requirement, and December 15, 2010, for two other requirements. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR 73. The NRC staff has determined that granting the licensee's proposed exemption would 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 on 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 desires 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 in order 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 and discussed in the June 4, 2009 letter.

#### *Shearon Harris Nuclear Power Plant, Unit 1, Schedule Exemption Request*

The licensee provided detailed information in Attachment 1 of its November 30, 2009, letter requesting an exemption. It describes a comprehensive plan to install additional intrusion detection equipment, relocate certain security assets, and upgrade other security related systems at the HNP site, as well as providing a timeline for achieving full compliance with the new regulation. Attachment 1 contains security-related information regarding the site security plan, details of the specific requirements 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 enable the licensee to achieve full compliance by July 30, 2010, and December 15, 2010, respectively. The timeline provides dates indicating when: (1) The design work will be completed for the projects that will bring each of the three remaining areas into compliance; (2) construction will begin on various phases of the projects

(i.e., new roads, buildings, and fences); and (3) critical equipment will be ordered, installed, tested and become operational.

The licensee indicated that with completion of the three projects noted above by July 30, 2010, and December 15, 2010, HNP will be in full compliance with all the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009. Notwithstanding the schedular exemptions for these limited requirements, 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 HNP's current NRC approved physical security program.

#### 4.0 Conclusion for Part 73 Schedule Exemption Request

The 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 July 30, 2010, and December 15, 2010, respectively, with regard to three specified requirements of 10 CFR 73.55. Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, 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 installation of additional intrusion detection equipment, relocation of certain security assets, and upgrades to other security related systems are complete at HNP justifies extending the full compliance date with regard to the specified requirements of 10 CFR 73.55. The security measures that HNP needs additional time to implement are new requirements imposed by the March 27, 2009, amendments to 10 CFR 73.55, and are 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, deadline for the three items specified in Attachment 1 of the PEC letter dated November 30, 2009, the licensee is required to be in full compliance with the specified requirements of 10 CFR

73.55 by July 30, 2010, and December 15, 2010, as applicable. 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 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 3942, dated January 25, 2010).

This exemption is effective upon issuance.

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

For the Nuclear Regulatory Commission.

**Allen Howe,**

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-29161]

### Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

February 26, 2010.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of February, 2010. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 23, 2010, and should be accompanied by proof of service on the applicant, 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 reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F

Street, NE., Washington, DC 20549-1090.

**FOR FURTHER INFORMATION CONTACT:** Diane L. Titus at (202) 551-6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549-4041.

### Oppenheimer Baring Japan Fund [File No. 811-21954]

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On August 8, 2009, applicant transferred its assets to Oppenheimer International Growth Fund, based on net asset value. Expenses of \$33,608 incurred in connection with the reorganization were paid by applicant.

*Filing Date:* The application was filed on February 2, 2010.

*Applicant's Address:* 6803 S. Tucson Way, Centennial, CO 80112.

### Samarnan Investment Corporation [File No. 811-2824]

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 2, 2009, applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of \$93,115 incurred in connection with the liquidation were paid by applicant. Applicant has retained \$37,700 in cash to pay certain outstanding expenses.

*Filing Date:* The application was filed on February 1, 2010.

*Applicant's Address:* 214 North Ridgeway Dr., Cleburne, TX 76033.

### North Track Funds, Inc. [File No. 811-4401]

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On July 31, 2009, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of \$74,209 incurred in connection with the liquidation were paid by applicant and Ziegler Capital Management, LLC, applicant's investment adviser.

*Filing Date:* The application was filed on February 5, 2010.

*Applicant's Address:* 200 South Wacker Dr., Suite 2000, Chicago, IL 60606.

### Cohen & Steers European Realty Shares, Inc. [File No. 811-22010]

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On September 18, 2009, applicant transferred its assets to Cohen & Steers International Realty Fund, Inc., based on net asset value.