

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. In addition, in promulgating its revisions to 10 CFR part 73, the Commission prepared an environmental assessment and published a finding of no significant impact [Part 73, Power Reactor Security Requirements, 74 FR 13926 (March 27, 2009)].

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 actions, the NRC staff considered denial of the proposed actions (*i.e.*, the "no-action" alternative). Denial of the exemption request would result in no change in current environmental impacts. If the proposed action was denied, the licensee would have to comply with the March 31, 2010, implementation deadline. The environmental impacts of the proposed exemption and the "no-action" alternative 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 FCS dated August 1972, as supplemented through the "Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Fort Calhoun Station Unit 1—Final Report (NUREG-1437, Supplement 12)."

Agencies and Persons Consulted

In accordance with its stated policy, on February 4, 2010, the NRC staff consulted with the Nebraska State official, Julia Schmitt, of the Department of Health and Human Services Regulation and Licensure, 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.

For further details with respect to the proposed action, see the licensee's letter dated December 31, 2009, as supplemented by letter dated January 21, 2010. The January 21, 2010, submittal and portions of the December 31, 2009, submittal contain security-related information and, accordingly, are exempt from public disclosure. Other parts of the December 31, 2009, document may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Room O-1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (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 or 301-415-4737, or send an e-mail to pdr.resource@nrc.gov.

Dated at Rockville, Maryland, this 2nd day of March 2010.

For the Nuclear Regulatory Commission.

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-334 And 50-412; NRC-2010-0049]

Firstenergy Nuclear Operating Company, Firstenergy Nuclear Generation Corp., Ohio Edison Company, the Toledo Edison Company, Beaver Valley Power Station, Unit Nos. 1 And 2; Exemption

1.0 Background

FirstEnergy Nuclear Operating Company (licensee) is the holder of

Facility Operating License Nos. DPR-66 and NPF-73, which authorizes operation of the Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS-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 Beaver County, Pennsylvania.

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 plans. 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 of these new requirements that BVPS-1 and 2 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 23, 2009, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's letters contain security 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. The request is to extend the compliance date for one specific requirement from the current March 31, 2010, deadline to December 17, 2010. Being granted this exemption for the extension would allow the

licensee to design the necessary modifications, procure equipment and material, and implement upgrades 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, as noted above, would allow an extension from March 31, 2010, to December 17, 2010, for the implementation date for one specific requirement of the new rule. 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 NRC approval of the licensee's exemption request 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 and discussed in the June 4, 2009, letter.

BVPS-1 and 2 Schedule Exemption Request

The licensee provided detailed information in its letter dated November 30, 2009, as supplemented December 23, 2009, requesting an exemption. It describes a comprehensive plan to design the necessary modifications, procure equipment and material, and implement upgrades to comply with a specific aspect of 10 CFR 73.55 and provides a timeline for achieving full compliance with the new regulation. The submittals contain security 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 would allow the licensee to achieve full compliance by December 17, 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.

The licensee currently maintains a security program acceptable to the NRC and the new 10 CFR Part 73 security measures that will be implemented by March 31, 2010, will continue to provide acceptable physical protection of BVPS-1 and 2 during the requested extension period.

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 its current NRC approved physical security program. By December 17, 2010, BVPS-1 and 2 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 17, 2010, with regard to the specified 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 BVPS-1 and 2 equipment installation is complete justifies extending the full compliance date with regard to the specified requirement of 10 CFR 73.55. The security measures, BVPS-1 and 2 need additional time to implement, are new requirements imposed by 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, implementation deadline for the requirement specified in the licensee's letter dated November 30, 2009, as supplemented December 23, 2009, the licensee is required to be in full compliance by December 17, 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 6736; dated February 10, 2010.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 1st day of March 2010.

For the Nuclear Regulatory Commission.

Joseph G. Gitter,

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

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