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If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date this Confirmatory Order was published in the **Federal Register**, without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. A request for hearing shall not stay the immediate effectiveness of this order.

Dated this 1st day of March 2010.

For the Nuclear Regulatory Commission.

Elmo E. Collins,
Regional Administrator.

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50-341; [NRC-2010-0099]

Detroit Edison Company; FERMI 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an Exemption, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 73.5, "Specific exemptions," from the implementation date for certain new requirements of 10 CFR Part 73, "Physical protection of plants and

materials," for Facility Operating License No. NPF-43, issued to Detroit Edison Co. (DECO) (the licensee), for operation of the Fermi 2, located in Monroe County, Michigan. In accordance with 10 CFR 51.21, the NRC prepared an environmental assessment documenting its finding. The NRC concluded that the proposed actions will have no significant environmental impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt Fermi 2 from the required implementation date of March 31, 2010, for several new requirements of 10 CFR Part 73. Specifically, Fermi 2 would be granted an exemption from being in full compliance with certain new requirements contained in 10 CFR 73.55 by the March 31, 2010, deadline. DECO has proposed an alternate full compliance implementation date of May 31, 2011, approximately 14 months beyond the date required by 10 CFR Part 73. The proposed action, an extension of the schedule for completion of certain actions required by the revised 10 CFR Part 73, does not involve any physical changes to the reactor, fuel, plant structures, support structures, water, or land at the Fermi 2 site.

The proposed action is in accordance with the licensee's application dated November 19, 2009, as supplemented by letter dated December 23, 2009.

The Need for the Proposed Action

The proposed action is needed to provide the licensee with additional time required for completion of significant physical modifications to comply with the new 10 CFR part 73 rule requirements. While some of the work scope required by the 10 CFR part 73 rule change requirements will be completed by March 31, 2010, some modifications will require additional time to complete.

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 extend the implementation deadline 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 environmental assessment and findings of no significant impact made by the

Commission in promulgating its revisions to 10 CFR Part 73 as discussed in a **Federal Register** notice dated March 27, 2009 (74 FR 13967). 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 or the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Stevens 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, 13967 (March 27, 2009)].

The licensee currently maintains a security system acceptable to the NRC and will continue to provide acceptable physical protection of Fermi 2 in lieu of the new requirements in 10 CFR Part 73. Therefore, the extension of the implementation date of the new requirements of 10 CFR Part 73 to May 31, 2011, would not have any significant environmental impacts.

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 Fermi 2, NUREG-0769, dated August 1981, Addendum No. 1, dated March 1982.

Agencies and Persons Consulted

In accordance with its stated policy, on January 12, 2010, the NRC staff consulted with the Michigan State official, Mr. Ken Yale, 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 November 19, 2009, as supplemented by letter dated December 23, 2009. Portions of November 19, 2009, and December 23, 2009, submittals contain security related information and, accordingly, are not available to the public. Other parts of these documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O-1F21, 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 8th day of March, 2010.

For the Nuclear Regulatory Commission.

Mahesh Chawla,

Project Manager, Plant Licensing Branch LPL III-1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-498 and 50-499; NRC-2010-0060]

STP Nuclear Operating Company, South Texas Project, Units 1 and 2; Exemption

1.0 Background

STP Nuclear Operating Company (STPNOC, the licensee) is the holder of Facility Operating Licenses numbered NPF-76 and NPF-80, which authorize operation of the South Texas Project (STP), Units 1 and 2, respectively. The licenses provide, among other things, that the facility is subject to the 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 Matagorda County, Texas.

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 the licensees. In addition, the amendments to 10 CFR 73.55 include new requirements to further enhance site security based upon insights gained from implementation of the post September 11, 2001, security orders. STPNOC 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 18, 2009, the licensee requested an exemption in accordance with 10 CFR 73.5, “Specific exemptions.” The licensee's letter contains security-related information and, accordingly, those portions are not available to public. The licensee has requested an exemption from March 31,

2010, compliance date, stating that it must complete certain modifications to address the new 10 CFR Part 73 requirements. Specifically, the request is to extend the compliance date for one specific requirement from the current March 31, 2010, deadline to June 30, 2010. Granting this exemption for the one item would allow the licensee to complete design, procurement, and installation of plant upgrades to meet the regulatory requirements.

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 June 30, 2010, of the implementation date for one specific requirement of the new rule. The NRC staff has determined that granting the licensee's proposed exemption request would not result in a violation of the Atomic Energy Act of 1954, as amended, or Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final power reactor security rule provided to the Commission, 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 to allow 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,