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*Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RAD), Office of Administration, Mail Stop: TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by fax to RAD at (301) 492-3446.

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Dated at Rockville, Maryland, this 19th day of August 2010.

For the Nuclear Regulatory Commission.

**Harriet Karagiannis,**

*Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

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## **NUCLEAR REGULATORY COMMISSION**

**[NRC-2010-0061; Docket No. 50-298]**

### **Nebraska Public Power District; Cooper Nuclear Station; Exemption**

#### **1.0 Background**

Nebraska Public Power District (NPPD or the licensee) is the holder of Facility Operating License No. DPR-46 which authorizes operation of the Cooper Nuclear Station (CNS). The license provides, among other things, that the facility is subject to the rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a boiling-water reactor located in Nemaha County, Nebraska.

#### **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 in the **Federal Register** on March 27, 2009 (74 FR 13926-13993), 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. By letter dated February 26, 2010, the NRC granted

NPPD an exemption from the March 31, 2010, implementation date until August 31, 2010, for three of these additional requirements. NPPD now seeks an exemption from the August 31, 2010, implementation date until December 31, 2010, for the same three additional requirements. All other physical security requirements established by this recent rulemaking have already been implemented by the licensee.

By application dated July 7, 2010, as supplemented by letter dated July 20, 2010, 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 the public. The licensee has requested an exemption from the August 31, 2010, implementation date, stating that it must complete a number of modifications to the current site security configuration before all requirements can be met. Specifically, the request is for three requirements that would be met by December 31, 2010, instead of the August 31, 2010, deadline. Granting 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 or exceed 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. By letter dated February 26, 2010 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML100190100), the NRC approved an exemption that allowed NPPD an extension from March 31, 2010, until August 31, 2010, of the implementation date for three specific requirements of the new rule.

NRC approval of this exemption, as noted above, would allow an extension

from August 31, 2010, until December 31, 2010, of the implementation date for three specific requirements of the new rule. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR part 73. The NRC staff has determined that granting of 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, 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, as documented in the letter from R.W. Borhardt (NRC) to M.S. Fertel (Nuclear Energy Institute) dated June 4, 2009 (ADAMS Accession No. ML091410309). The licensee's request for an exemption is therefore consistent with the approach set forth by the Commission and discussed in the letter dated June 4, 2009.

#### *CNS Schedule Exemption Request*

The licensee provided detailed information in the Attachment to its letter dated July 7, 2010, as supplemented by letter dated July 20, 2010, requesting an exemption. The licensee is requesting additional time to implement certain new requirements due to the impact on construction activities of the extremely wet spring and flooding of the Missouri River. The licensee describes a comprehensive plan to expand the protected area with upgrades to the security capabilities of its CNS site and provides a timeline for achieving full compliance with the new

regulation. The Attachment to the licensee's letter dated July 7, 2010, 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 August 31, 2010, deadline, justification for the exemption request, a description of the required changes to the site's security configuration, and a timeline with critical path activities that would bring the licensee into full compliance by December 31, 2010. The timeline provides dates indicating when (1) construction will begin on various phases of the project (e.g., new buildings and fences), and (2) critical equipment will be ordered, installed, tested, and become operational. A redacted version of the licensee's exemption request dated July 7, 2010, including attachment, and the licensee's letter dated July 20, 2010, are publicly available at ADAMS Accession Nos. ML101900266 and ML102090069, respectively.

Notwithstanding the scheduler 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 31, 2010, CNS will be in full compliance with 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 submittal and concludes that the licensee has justified its request for an extension of the compliance date with regard to three specified requirements of 10 CFR 73.55 until December 31, 2010.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," an exemption from the August 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 long-term benefits that will be realized when the CNS modifications are complete justifies extending the full compliance date in the case of this particular licensee. The security measures that CNS needs additional time to complete 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, the NRC concludes 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 August 31, 2010, deadline for the three items specified in the Attachment to NPPD's letter dated July 7, 2010, as supplemented by letter dated July 20, 2010, the licensee is required to be in full compliance with 10 CFR 73.55 by December 31, 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.

The exemption extends the compliance date of three specified requirements of 10 CFR 73.55 until December 31, 2010. The Commission has determined that granting this exemption from the requirements of 10 CFR 73.55 involves (i) no significant hazards consideration, (ii) no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, (iii) no significant increase in individual or cumulative public or occupational radiation exposure, (iv) no significant construction impact, and (v) no significant increase in the potential for or consequences from radiological accidents. In addition, the requirements from which this exemption is sought involve 10 CFR 51.22(c)(25)(vi)(G), "Scheduling requirements." Accordingly, the exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25)(i)-(vi). Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC's consideration of this exemption request.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 23rd day of August 2010.

For the Nuclear Regulatory Commission.

**Joseph G. Giitter,**

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

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