CFRWs and has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(iii) is present whenever “compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation as adopted, or that are significantly in excess of those incurred by others similarly situated.” The underlying purpose of 10 CFR 50.10 is to define clearly the licensing requirements for a LWA. The applicant has demonstrated and the NRC staff has confirmed that the influence of the CFRWs on interactions with the SSCs will have a negligible nexus to safety. The applicant also cites undue hardship or other costs as a special circumstance that would warrant granting this exemption. The applicant has provided two potentially viable alternate construction plans to avoid delay in their schedule; (1) Redesign the CFRWs to make it more practical to remove prior to fuel load and (2) increase the size of the excavation and locate the crane in the excavation. STPNOC states that both options will increase the construction cost by $22 million and $260 million respectively. Therefore, since the underlying purpose of 10 CFR 50.10 is still being achieved concerning the safety of the SSCs during construction activities and the applicant has demonstrated undue hardship, the special circumstance required by 10 CFR 50.12(a)(2)(iii) for the granting of an exemption from 10 CFR 50.10 exists.

The applicant has also provided information on this proposed action pursuant to 10 CFR 50.12(b) which states any person may request an exemption permitting the conduct of activities prior to the issuance of the construction permit prohibited by 10 CFR 50.10. The balancing factors for granting such an exemption are evaluated in the environmental assessment (EA) that is attached to this package. The ADAMS Accession number for this associated EA is ML101580541.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a) and 10 CFR 50.12(b), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants South Texas Project Nuclear Operating Company an exemption from the requirements in 10 CFR 50.10 for the installation of the CFRWs for Units 3 and 4.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 67784).

This exemption is effective upon issuance.

Dated at Rockville, Maryland on November 5, 2010.

For the Commission.

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John Berry, Director.

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