

NUCLEAR REGULATORY COMMISSION
CAROLINA POWER & LIGHT COMPANY
H. B. ROBINSON STEAM ELECTRIC PLANT, UNIT NO. 2
DOCKET NO. 50-261
[NRC-2010-0062]
EXEMPTION

1.0 BACKGROUND

Carolina Power & Light Company (the licensee) is the holder of Facility Operating License No. DPF-23, which authorizes operation of the H. B. Robinson Steam Electric Plant, Unit 2 (HBRSEP). 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 a pressurized water reactor located in Darlington County, South 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 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 2 of these new requirements that HBRSEP 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, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's November 30, 2009, letter contains proprietary and security-related information that, accordingly, is 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 modifications to the current site security configuration before all requirements can be met. Specifically, the request is for two requirements that will be met by December 30, 2010, versus the March 31, 2010, deadline to. Being granted this exemption for the two items will allow the licensee to complete the modifications designed to meet or exceed the noted 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, allows an extension from March 31, 2010, until December 30, 2010, to allow for temporary noncompliance with the new rule in two specific areas. 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 of the licensee's proposed exemption will 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 (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.

HBRSEP 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 upgrade the security capabilities of its HBRSEP site and provides a timeline for achieving full compliance with the new regulation. Attachment 1 contains proprietary 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 site cannot be in compliance, the required changes to the site's security configuration, and a timeline with critical path activities that will bring the licensee into full compliance by December 30, 2010. The timeline provides dates indicating when construction will begin on various phases of the project and when critical equipment will be ordered, installed, tested and become operational.

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. Furthermore, the security measures for which HBRSEP needs additional time to implement are in addition to those required by the security orders issued in response to the events of September 11, 2001. By December 30, 2010, HBRSEP 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 staff has reviewed the licensee's submittal and concludes that the licensee has provided adequate justification for its request for an extension of the compliance date to December 30, 2010, with regard to two 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 associated HBRSEP site modifications are complete justify exceeding the full compliance date with regard to the two specific requirements of 10 CFR 73.55 in the case of this particular licensee. 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 March 31, 2010, deadline for the two items specified in Attachment 1 of the licensee's letter dated November 30, 2009, the licensee is required to be in full compliance by December 30, 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 8410, February 24, 2010.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of March 2010.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

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