[7590-01-P]

NUCLEAR REGULATORY COMMISSION

ENERGY NORTHWEST

COLUMBIA GENERATING STATION

DOCKET NO. 50-397

EXEMPTION

[NRC-2010-0084]

1.0 BACKGROUND

Energy Northwest (the licensee) is the holder of Facility Operating License No. NPF-21 which authorizes operation of the Columbia Generating Station (CGS). 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 Benton County, Washington.

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, 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 (74 FR 13926), 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 additional requirements that the licensee 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 application dated January 27, 2010, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." Attachment 1 to the licensee's letter contains security-related information and, accordingly, those portions of the letters are being withheld from public disclosure. A redacted version of the licensee's exemption request dated January 27, 2010, is publicly available in the Agencywide Documents Access and Management System (ADAMS) Accession No. ML100481052. The licensee has requested an exemption from the March 31, 2010, compliance date stating that it must accommodate a potential manufacturing delay that would result in a non-compliance of the new security requirements. Specifically, the request is to extend the implementation date from the current March 31, 2010, deadline to May 15, 2010. Granting this exemption for the one item would afford the licensee additional time to perform necessary upgrades 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.

NRC approval of this exemption, as noted above, would allow an extension from March 31, 2010, until May 15, 2010, of the implementation date for one specific requirement 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. Borchardt (NRC) to M. S. Fertel (Nuclear Energy Institute) dated June 4, 2009. 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.

CGS Schedule Exemption Request

The licensee provided detailed information in the Attachments to its letter dated January 27, 2010, requesting an exemption. The licensee is requesting additional time to perform necessary upgrades to the CGS security system due to manufacturing delays of one item at the vendor. The licensee describes a comprehensive plan to perform upgrades to the security capabilities of its CGS site and provides a timeline for achieving full compliance with the new regulation. Attachment 1 to the licensee's letter contains security-related 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, justification for the exemption request, a description of the required changes to the site's security configuration, and a timeline with the activities that would bring enable the licensee to achieve full compliance by May 15, 2010. The timeline provides dates indicating when the critical equipment will be received, installed, and become operational. Redacted versions of the licensee's exemption request are included in Attachments 2 and 3 to its January 27, 2010, letter and are publicly available in ADAMS Accession No. ML100481052.

Notwithstanding the schedule 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 May 15, 2010, CGS 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 staff has reviewed the licensee's submittal and concludes that the licensee has justified its request for an extension of the compliance date to May 15, 2010 with regard to one 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 long-term benefits that will be realized when the CGS modifications are complete justify extending the full compliance date in the case of this particular licensee. The security measure for which CGS needs additional time to complete is a new requirement imposed by March 27, 2009, amendments to 10 CFR 73.55, and is 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 March 31, 2010, deadline for the one item specified in the Attachments to the licensee's letter dated January 27, 2010, the licensee is required to be in full compliance with 10 CFR 73.55 by May 15, 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 10834; March 9, 2010].

This exemption is effective upon issuance.

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

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

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