

NUCLEAR REGULATORY COMMISSION

FPL ENERGY POINT BEACH, LLC

POINT BEACH NUCLEAR PLANT, UNITS 1 AND 2

DOCKET NOS. 50-266 AND 50-301

EXEMPTION

[NRC-2010-0123]

1.0 BACKGROUND

FPL Energy Point Beach, LLC (FPLE, the licensee) is the holder of Renewed Facility Operating License Nos. DPR-24 and DPR-27, which authorize operation of the Point Beach Nuclear Plant, Units 1 and 2 (PBNP). The licenses provide, 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 two pressurized water reactors located in Manitowoc County, Wisconsin.

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 plans. 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 one of these new requirements that PBNP 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By letter dated February 26, 2010, which was superseded by letter dated March 11, 2010, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." Enclosures 1 to the February 26, and March 11, 2010, letters contain security-related information and, accordingly, are not available to the public. Redacted versions of the licensee's exemption requests dated February 26, and March 11, 2010, are publicly available in the Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML100600565 and ML100710739, respectively. The licensee has requested an exemption from the March 31, 2010, compliance date stating that it must accommodate unforeseen delays such as adverse weather, material delivery delays, and testing constraints that could result in non-compliance with the March 31, 2010, compliance deadline. Specifically, the request is for one requirement that would be met by May 28, 2010, versus the March 31, 2010, deadline. 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 28, 2010, for 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 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 Power Reactor Security rule sent 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 reach 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 request generically 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.

PBNP Schedule Exemption Request

The licensee provided detailed information in Enclosure 1 of its letter dated March 11, 2010, requesting an exemption. The licensee is requesting additional time to perform necessary upgrades to the PBNP security system due to unforeseen delays such as adverse weather, material delivery delays, and testing constraints, and provides a timeline for achieving full compliance with the new regulation. Enclosure 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, 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 May 28, 2010. The timeline provides dates indicating when the critical equipment will be 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. By May 28, 2010, PBNP 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 submittals and concludes that the licensee has justified its request for an extension of the compliance date with regard to one specified requirement of 10 CFR 73.55 until May 28, 2010.

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 PBNP security modifications are complete justifies exceeding the full compliance date in the case of this particular licensee. The security measure for which PBNP needs additional time to implement 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 Enclosure 1 of PBNP letter dated March 11, 2010, the licensee is required to be in full compliance with 10 CFR 73.55 by May 28, 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 14206; March 24, 2010].

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 24th day of March, 2010.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

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