

design-basis accident radiological consequence analyses, MSIV leakage was added to the overall containment integrated leakage rate, as measured by the Type A test specified in 10 CFR 50, Appendix J, Option B. By Amendment Nos. 181 and 213 issued on February 1, 1996, for BSEP Units 1 and 2, respectively, the licensee was authorized to use the Option B provisions of 10 CFR Part 50, Appendix J.

Based on the Safety Evaluation supporting Amendment Nos. 221 and 246 issued on May 30, 2002, the NRC has accepted that MSIV leakage for design-basis accident analyses has been accounted for separately from the overall leakage associated with the primary containment boundary and overall doses meet appropriate regulatory limits. As such, the requirement of 10 CFR 50, Appendix J, Option B, Section III.A that MSIV leakage be included as part of the Type A test results is not necessary to achieve the underlying purpose of the rule; that is, ensuring the actual radiological consequences of design-basis accidents remain below those analyzed as demonstrated through the measured containment leakage test.

### 3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security, and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR Part 50.12(a)(2)(ii), "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. \* \* \*"

The underlying purpose of the rule that implements Appendix J (*i.e.*, 10 CFR 50.54(o)) is to assure that containment leaktight integrity is maintained (a) as tight as reasonably achievable, and (b) sufficiently tight so as to limit effluent release to values bounded by the analyses of radiological consequences of design-basis accidents. The revised design-basis radiological consequences analyses address these pathways as individual factors, exclusive of the primary containment leakage. The staff has determined that the intent of the rule is not compromised by the proposed action, and that 10 CFR 50.12(a)(2)(ii) applies.

### 4.0 Conclusion

Accordingly, the Commission has determined that pursuant to 10 CFR Part 50.12(a)(1), an exemption is authorized by law and will not present an undue risk to the public health and safety, is consistent with the common defense and security, and that there are special circumstances present, as specified in 10 CFR 50.12(a)(2). An exemption is hereby granted to CP&L, BSEP Units 1 and 2 from the requirements of Sections III.A and III.B of Option B of Appendix J to 10 CFR Part 50. The exemption allows exclusion of MSIV leakage from the overall integrated leak rate test measurement.

Based on the foregoing, the separation of the main steam pathways from the other containment leakage pathways is warranted because a separate radiological consequence term has been provided for these pathways. The revised design-basis radiological consequences analyses address these pathways as individual factors, exclusive of the primary containment leakage. Therefore, the NRC staff finds the proposed exemption from Appendix J, to separate MSIV leakage from other containment leakage, to be acceptable.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (70 FR 11034).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 9th day of March 2005.

**Ledyard B. Marsh,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-271; License No. DPR-28]

### Entergy Nuclear Operations, Inc. Vermont Yankee Nuclear Power Station; Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission (NRC) has issued a Director's Decision on an April 23, 2004, petition by the New England Coalition, hereinafter referred to as the "Petitioner." The petition was supplemented on September 10, 2004.

The petition concerns the operation of the Vermont Yankee Nuclear Power Station (Vermont Yankee).

The basis for the April 23, 2004, petition, was the absence of two pieces of fuel rods in the spent fuel pool (SFP) at Vermont Yankee from their documented location. The Petitioner stated that Entergy Nuclear Operations, Inc. (Entergy or the licensee) had lost control of the spent fuel inventory at Vermont Yankee. The Petitioner would have no confidence that Entergy did not put leaking fuel rods or suspected leaking fuel assemblies back into the reactor core during the April 2004 refueling outage until Entergy accounted for all special nuclear material (SNM). The New England Coalition contends that operation with leaking fuel in the reactor core would be potentially unsafe and in violation of Federal regulations.

On May 5 and September 22, 2004, the Petitioner and the licensee met with the staff's Petition Review Board (PRB). These meetings gave the Petitioner and the licensee an opportunity to provide additional information and to clarify issues raised in the petition.

The NRC sent a copy of the proposed Director's Decision to the Petitioner and to the licensee for comment on December 27, 2004. The Petitioner responded with comments on January 25, 2005. The comments and the NRC staff's responses are included in the Director's Decision. The staff did not receive any comments from the licensee.

The Director of the Office of Nuclear Reactor Regulation denies the Petitioner's request that the NRC make Entergy do an accurate and NRC-verified inventory of the location, disposition, and condition of all irradiated fuel, including fuel currently loaded in the reactor, and order Entergy to halt all fuel movement at Vermont Yankee until the inventory is completed. The reasons for this decision are explained in the Director's Decision pursuant to Title 10 of Code of Federal Regulations (10 CFR), Section 2.206 (DD-05-01), the complete text of which is available in ADAMS for inspection at the Commission's Public Document Room at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS Public Library component of the NRC's Web site, <http://www.nrc.gov/reading-rm.html> (the Public Electronic Reading Room).

The Petitioner's request that all fuel movement be stopped is moot. All fuel movement for the April 2004 refueling outage had been completed before the NRC received the petition. The licensee has completed a documented inventory to confirm the total number of fuel

assemblies and their locations and the locations of the individual rods. The licensee successfully located the two fuel rod pieces in the SFP and did core verifications. The NRC therefore concludes that as of July 13, 2004, Entergy has been in full compliance with regulatory requirements to account for all SNM in its possession. Therefore the Petitioner's request has in effect been granted. The licensee took the requested actions voluntarily obviating the need for an order. Furthermore, the licensee has updated its inventory of SNM, so there is no need for the NRC to prohibit fuel movement.

The Petitioner claimed to have no confidence that Entergy did not put leaking fuel or suspected leaking fuel assemblies back into the reactor core during the last refueling outage. The NRC inspectors verified that no leaking fuel assemblies were reloaded in the reactor core. The NRC has concluded that Entergy is now in compliance with regulatory requirements to account for all SNM. However in the special inspection report issued on December 2, 2004, the inspectors identified an apparent violation of 10 CFR 74.19, "Material Control and Accounting of Special Nuclear Material-Recordkeeping," related to the two spent fuel rod pieces. The NRC is considering escalated enforcement action for this finding.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland, this 10th day of March 2005.

For the Nuclear Regulatory Commission.

**J.E. Dyer,**

*Director, Office of Nuclear Reactor Regulation.*

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 72-17]

### Notice of Issuance of Environmental Assessment and Finding of No Significant Impact Regarding a Proposed Exemption; Portland General Electric Company; Trojan Independent Spent Fuel Storage Installation

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Issuance of environmental assessment and finding of no significant impact.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

##### I. Background

Portland General Electric Company (PGE) is the licensee and holder of License No. SNM-2509 for the Trojan Independent Spent Fuel Storage Installation (Trojan ISFSI). In addition, PGE holds License No. NPF-1, pursuant to 10 CFR part 50, for the Trojan Nuclear Plant (TNP). The licensee will complete decommissioning of the Trojan Nuclear Plant and intends to terminate its part 50 license for the Trojan Nuclear Plant. The Trojan ISFSI contains the spent fuel removed from the Trojan Nuclear Plant.

Currently, the licensee provides financial assurance for the Trojan ISFSI pursuant to 10 CFR 72.30(c)(5), which allows a part 50 license holder to use the financial assurance provisions of part 50 to provide financial assurance for an ISFSI. The licensee maintains an external sinking fund for decommissioning funds pursuant to 10 CFR 50.75(e). However, when its part 50 license is terminated, it will no longer meet the condition of 10 CFR 72.30(c)(5) that allows it to use its existing external sinking fund to provide financial assurance for its ISFSI.

On April 29, 2004, PGE filed a request for NRC approval of a partial exemption from the provision of 10 CFR 72.30(c)(5) that requires an ISFSI licensee to additionally hold a part 50 license in order to use an external sinking fund as the exclusive means of financial assurance for decommissioning costs of an ISFSI.

## II. Environmental Assessment

*Identification of Proposed Action:* Pursuant to the requirements of 10 CFR 72.7, PGE requested a partial exemption from the financial assurance requirements of 10 CFR 72.30(c)(5). The exemption request was "partial" because it would apply only to the requirement that the ISFSI licensee also hold a part 50 license to use an external sinking fund as its exclusive method of providing financial assurance for its ISFSI. The licensee will continue to provide financial assurance conforming to the requirements of 10 CFR 50.75(e) and (h), although it reserved the right to change to another method as provided in other sections of 10 CFR 72.30(c). The licensee pointed out that the wording of 10 CFR 72.30(c)(5) allowed an "electric utility" to use an external sinking fund as the exclusive method of providing financial assurance when its part 72 ISFSI license was first issued. However, the rule was amended effective on December 24, 2003, which resulted in the change of the condition from "electric utility" to "a Part 50 licensee." PGE stated that it will remain an electric utility after the termination of its part 50 license, hence it will continue to meet the intent of the rule as originally issued.

The proposed action before the Commission is whether to grant this exemption pursuant to 10 CFR 72.7.

*Need for the Proposed Action:* The applicant is undertaking decommissioning activities associated with the Trojan Nuclear Plant and has informed the NRC of its intent to terminate the TNP operating license (License No. NPF-1), issued pursuant to 10 CFR part 50. PGE's 2003 Annual Financial Statement (Form 10-K, submitted to the U.S. Securities and Exchange Commission (SEC) on March 19, 2004) stated that PGE will collect \$14 million annually, until 2011, from its customers to pay for decommissioning. Those collections will occur whether or not the exemption is granted. However, if the exemption is not granted, PGE will incur higher costs due to the expense of providing a second independent financial assurance instrument, which would lead to unnecessary additional costs. Therefore, the exemption is in the public interest. If PGE were to adhere to the financial assurance requirements of 10 CFR 72.30, without the granting of the partial exemption, an unnecessary financial burden and associated increased overall operating costs would be borne by the applicant. In addition, granting of the partial exemption to the requirements of 10 CFR 72.30(c)(5) will facilitate