

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 to generically 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, ADAMS Accession No. ML091410309). 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.

#### *Millstone Schedule Exemption Request*

The licensee provided detailed information regarding the proposed exemption in the attachments to its letter dated January 12, 2010. The attachments describe a comprehensive plan to upgrade the Millstone security system to meet the new requirements in 10 CFR Part 73. Due to the procurement needs and installation activities associated with the required security system upgrades, the licensee has requested an exemption from the March 31, 2010, implementation date specified in the new rule for two specific requirements. DNC proposes to implement certain alarm station requirements by September 30, 2010, and certain uninterruptible power supply requirements by August 31, 2010.

The attachments to the licensee's letter dated January 12, 2010, details the specific portions of the regulations for which the site cannot be in compliance by the March 31, 2010, implementation date, along with justifications for each of the proposals. The attachments also provide a milestone schedule with the activities necessary to bring the licensee into full compliance by September 30, 2010.

Notwithstanding the schedule exemptions for these limited requirements, the licensee would 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 September 30, 2010, Millstone would 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 to August 31, 2010, and September 30, 2010, with regard to the two specified requirements of 10 CFR 73.55.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," 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 has determined that the long-term benefits that will be realized when the security upgrades are completed justifies extending the March 31, 2010, full compliance date for the two items in the licensee's exemption request. The security measures that DNC needs additional time to implement at Millstone are new requirements imposed by March 27, 2009, amendments to 10 CFR 73.55, and are in addition to those required by the security orders issued in response to the events of September 11, 2001. Therefore, the NRC staff 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 to the March 31, 2010, deadline for the two items specified in the attachments to DNC's letter dated January 12, 2010, the licensee is required to be in full compliance with 10 CFR 73.55 by September 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 14634; dated March 26, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 26th day of March 2010.

For the Nuclear Regulatory Commission.

**Joseph G. Giitter,**

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[FR Doc. 2010-7386 Filed 3-31-10; 8:45 am]

**BILLING CODE 7590-01-P**

## **NUCLEAR REGULATORY COMMISSION**

[Docket No. 50-302, NRC-2010-0105]

### **Florida Power Corporation, et al.; Crystal River Unit 3 Nuclear Generating Plant; Exemption**

#### **1.0 Background**

Florida Power Corporation (FPC, the licensee) is the holder of Facility Operating License No. DPR-72 that authorizes operation of the Crystal River Unit 3 Nuclear Generating Plant (CR-3). 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 one pressurized water reactor located in Citrus County, Florida.

#### **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 as a final rule in the **Federal Register** on March 27, 2009 (74 FR 13926-13993), 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 four of these new requirements that CR-3 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 (Agencywide Documents Access and Management System Accession No. ML093370143), and as supplemented by letter dated January 15, 2010, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." Attachment 1 of the licensee's November 30, 2009, letter and its letter dated January 15, 2010, contain security-related information and, accordingly, are 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 to extend the compliance date for four specific requirements stated in 10 CFR 73.55 from the current March 31, 2010, deadline to November 15 and December 15, 2010. Being granted this exemption for the four items would allow the licensee to implement specific parts of the revised requirements that involve significant physical upgrades to the CR-3 security system. A major security project that is planned is the expansion of the site protected area. Other plant modifications that are significant in scope involve the construction of new facilities, extensive design and procurement efforts, and work with high voltage cabling and the personnel safety risk associated with such work.

### **3.0 Discussion of Part 73 Schedule Exemption From the March 31, 2010, Full Implementation Date**

As stated in 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.'" In accordance with 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 would, as noted above, allow an extension from March 1, 2010, until November 15 and December 15, 2010, for compliance with the new rule in four specified areas. 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 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 to generically 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.

#### *Crystal River Schedule Exemption Request*

The licensee provided detailed information in Attachment 1 of the FPC letter dated November 30, 2009, requesting an exemption. It describes the specific security systems at CR-3 that require modification to comply with the requirements, which includes relocation and upgrades to the security intrusion detection system, construction of a building addition, and the addition of uninterruptable power supplies. These plant modifications are significant in scope involving the construction of new facilities, extensive design and procurement efforts, and work with high voltage cabling. These modifications warrant a thorough review of the safety-security interface and have to be coordinated with the CR-3 refueling outage in fall 2009. All of these efforts require careful design,

planning, procurement, and implementation efforts. Attachment 1 of the November 30, 2009, letter contains security-related information regarding the site security plan, details of specific portions of the regulation of which the site cannot be in compliance by the March 31, 2010, deadline, changes to the site's security configuration to meet the new requirements, and a timeline with critical path activities for the licensee to achieve full compliance by December 15, 2010. The timeline provides dates indicating when (1) Design activities are completed and approved, (2) expansion of the protected area begins and is completed, and (3) the new and relocated equipment is to be installed and tested.

The site-specific information provided within the CR-3 exemption request is relative to the requirements from which the licensee requested exemption and demonstrates the need for modification to meet the four specific requirements of 10 CFR 73.55. The proposed implementation schedule depicts the critical activity milestones of the security system upgrades; is consistent with the licensee's solution for meeting the requirements; is consistent with the scope of the modifications and the issues and challenges identified; and is consistent with the licensee's requested compliance date.

Notwithstanding the proposed schedule exemption 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 December 15, 2010, CR-3 will be in full compliance with all of the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

### **4.0 Conclusion for Part 73 Schedule Exemption Request**

The NRC staff has reviewed the licensee's submittals and concludes that the licensee has provided adequate justification for its request for an extension of the compliance date with regard to four specified requirements of 10 CFR 73.55 until November 15 and December 15, 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 security systems upgrade is complete justify extending the March 31, 2010, full compliance date with regard to the specific requirements of 10 CFR 73.55 for this particular licensee. The security measures that CR-3 needs additional time to implement are new requirements imposed by March 27, 2009, amendments to 10 CFR 73.55, and are 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 to the March 31, 2010, deadline for the four items specified in Attachment 1 of the FPC letter dated November 30, 2009, and January 15, 2010, letter, the licensee is required to be in partial compliance and in full compliance with 10 CFR 73.55 by November 15, and December 15, 2010, respectively. 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.

In accordance with 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 13320, dated March 19, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 25 day of March 2010.

For the Nuclear Regulatory Commission.

**Joseph G. Giitter,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2010-7389 Filed 3-31-10; 8:45 am]

**BILLING CODE 7590-01-P**

## **NUCLEAR REGULATORY COMMISSION**

**[Docket No. 50-333; NRC-2010-0136]**

### **James A. Fitzpatrick Nuclear Power Plant; Exemption**

#### **1.0 Background**

Entergy Nuclear Operations, Inc. (the licensee) is the holder of Facility Operating License No. DPR-59, which authorizes operation of the James A.

FitzPatrick Nuclear Power Plant (JAFNPP). The license provides, among other things, that the facility is subject to all 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 Oswego County in New York State.

#### **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 four of these new requirements that JAFNPP 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 January 21, 2010, as supplemented by letters dated February 25 and March 2, 2010, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's letter dated January 21, 2010, and February 25, 2010, contain sensitive security information and, accordingly, are withheld from public disclosure in accordance with 10 CFR 2.390. The licensee has requested an exemption from the March 31, 2010, compliance date stating that due to the scope of the design, procurement, and installation activities and in consideration of impediments to construction such as winter weather conditions and equipment delivery schedules, completion of some of the new requirements contained in 10 CFR 73.55 will require additional time beyond

March 31, 2010, before all requirements can be met. Specifically, the request to extend the compliance date is for four specific requirements from the current March 31, 2010, deadline to December 31, 2010. Being granted this exemption for the four items would allow the licensee to be in full compliance with the 10 CFR Part 73 Final Rule.

#### **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.

The NRC approval of this exemption, as noted above, would allow an extension for the implementation date from March 31, 2010, until December 31, 2010, with the new rule for four specified requirements. 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 NRC approval of the licensee's exemption request is authorized by law.

In the draft final power reactor security 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