

5. *The number of annual respondents:* 372.

6. *The number of hours needed annually to complete the requirement or request:* 89,465 hours (81,785 reporting + 7,700 recordkeeping) or an average of 125 hours per response (81,765 reporting burden hours/655 responses) and an average of 13 hours per recordkeeper (7,700 recordkeeping burden hours/61 recordkeepers).

7. *Abstract:* 10 CFR Part 70 establishes requirements for licenses to won, acquire, receive, possess, use, and transfer special nuclear material. The information in the applications, reports, and records is used by NRC to make licensing and other regulatory determinations concerning the use of special nuclear material. The revised estimate of burden reflects the addition of requirements for documentation for termination or transfer of licensed activities, and modifying licenses.

Submit, by December 17, 2010, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/index.html>. The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC-2010-0322. You may submit your comments by any of the following methods. Electronic comments: Go to <http://www.regulations.gov> and search for Docket No. NRC-2010-0322. Mail comments to NRC Clearance Officer, Tremaine Donnell (T-5 F53), U.S.

Nuclear Regulatory Commission, Washington, DC 20555-0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T-5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by telephone at 301-415-6258, or by e-mail to INFOCOLLECTS.Resource@NRC.GOV.

Dated at Rockville, Maryland, October 8, 2010.

For the Nuclear Regulatory Commission,
Tremaine Donnell,
NRC Clearance Officer, Office of Information Services.

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50-16; NRC-2010-0328]

DTE Energy; Enrico Fermi Atomic Power Plant Unit 1, Exemption From Certain Security Requirements

1.0 Background

DTE Energy (DTE) is the licensee and holder of Facility Operating License No. DPR-9 issued for Enrico Fermi Atomic Power Plant, Unit 1 (Fermi 1), located in Monroe County, Michigan. Fermi 1 is a permanently shutdown nuclear reactor facility. The license provides, among other things, that the licensee is subject to the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

Fermi 1 was a fast breeder reactor power plant cooled by sodium and operated at essentially atmospheric pressure. In November 1972, the Power Reactor Development Company (PRDC), the licensee at that time, made the decision to decommission Fermi 1. The fuel and blanket subassemblies were shipped offsite in 1973. Most of the decommissioning of the Fermi 1 plant was completed in December 1975. The facility is permanently shut down and defueled and the licensee is no longer authorized to operate or place fuel in the reactor. The license for Fermi 1 expires in 2025.

Fuel for the Fermi 1 reactor was assigned to the project under an Atomic Energy Commission (AEC) lease agreement. At the time of decommissioning, consistent with the lease agreement, the AEC agreed to accept the fuel from Fermi 1 at its Savannah River Project (SRP) facility. The first shipment of fuel from the site was made on February 6, 1973. On May 15, 1973, the last shipment of fuel

arrived at the SRP. Disposal of all the blanket subassemblies, which contained special nuclear material (SNM), was accomplished by shipment to the Idaho Chemical Processing Plant. A letter dated November 6, 1975, from the PRDC, documented the completed removal from the site of the fuel and blanket material containing SNM.

By letter dated November 26, 1996, the licensee requested that the NRC clarify the applicability of certain recently revised NRC regulations to Fermi 1, including 10 CFR 50.54(p), which addresses the safeguards contingency plan. In the NRC's response, dated June 25, 1997, the staff determined that the physical protection for Fermi 1 was adequate without the safeguards contingency plan based on the prior removal of the SNM from the Fermi 1 site and the non-operational status of the facility, but the NRC did not specifically grant an exemption from 10 CFR 50.54(p).

Fermi 1 is currently licensed to possess not more than 15 grams of uranium-235, uranium-233 or plutonium, or any combination thereof, with plutonium activity totaling no more than 2 curies. The licensee is permitted to possess this nominal quantity of SNM due to material that may remain in plant systems or be associated with radioactive apparatus or equipment. The 15 gram and 2 curie limit was considered a minimal quantity and was below the criteria requiring emergency planning, criticality monitoring, or material status reports per 10 CFR Part 70 and 10 CFR Part 74.

2.0 Action

Section 50.54(p)(1) of Title 10 of the *Code of Federal Regulations* states, "The licensee shall prepare and maintain safeguards contingency plan procedures in accordance with Appendix C of Part 73 of this chapter for affecting the actions and decisions contained in the Responsibility Matrix of the safeguards contingency plan."

Part 73 of Title 10 of the *Code of Federal Regulations*, "Physical Protection of Plant and Materials," provides, "This part prescribes requirements for the establishment and maintenance of a physical protection system which will have capabilities for the protection of special nuclear material at fixed sites and in transit and of plants in which special nuclear material is used." In Section 73.55, entitled "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," paragraph (b)(1) states, "The licensee shall establish and maintain a physical protection program,

to include a security organization, which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety.”

The NRC revised 10 CFR 73.55, in part to include the preceding language, through the issuance of a final rule on March 27, 2009. The revised regulation stated that it was applicable to all Part 50 licensees. The NRC became aware that many Part 50 licensee's with facilities in decommissioning status did not recognize the applicability of this regulation to their facility. Accordingly, the NRC informed licensees with facilities in decommissioning status and other stakeholders that the requirements of 10 CFR 73.55 were applicable to all Part 50 licensees. By letter dated August 4, 2010, the NRC informed DTE of the applicability of the revised rule and that it would have to comply with the revised rule or request an exemption.

Subsequent discussions with the licensee indicated that it believed that the June 25, 1997, letter from the NRC had relieved DTE of the requirement to implement the security requirements of 10 CFR Parts 50 and 73 due to the removal of SNM from the site. Because the licensee reasonably and in good faith believed that the staff had relieved DTE from the SNM security requirements through the June 25, 1997, letter; the logic and conclusions of the June 25, 1997, letter still apply today; and the licensee's security programs meet the baseline requirements of the previous version of Section 73.55 and the requirements in subsequent security orders; the NRC staff is considering, upon its own initiative, the issuance of an exemption from the security requirements of 10 CFR 50.54(p) and 10 CFR Part 73 for Fermi 1 to clarify the record and avoid further confusion.

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 or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present when application of the regulation in the particular circumstances would not serve the underlying purpose of the rule and when compliance would result in costs significantly in excess of those

incurred by others similarly situated. Also, pursuant to 10 CFR 73.5, “Specific exemptions,” the Commission may grant exemptions from the regulations in this part as it determines 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 security requirements of 10 CFR Part 73, as applicable to a 10 CFR Part 50 licensed facility, presume that the purpose of the facility is to possess and utilize SNM. With the completion of the spent fuel transfer to the AEC in 1973, there is no longer any SNM located within the Fermi-1, 10 CFR Part 50 licensed site other than that contained in plant systems as residual contamination. With the removal of the fuel and blanket material containing SNM, the potential for radiological sabotage or diversion of SNM at the 10 CFR Part 50 licensed site was eliminated. Therefore, the continued application of the 10 CFR Part 73 requirements to the Fermi 1 facility would no longer be necessary to achieve the underlying purpose of the rule. Additionally, as has been noted at other decommissioning nuclear power facilities, with the removal of the spent nuclear fuel and blanket material from the site, the 10 CFR Part 50 licensed site would be comparable to a source and byproduct licensee that uses general industrial security (i.e. locks and barriers) to protect the public health and safety. The continued application of 10 CFR Part 73 security requirements would cause the licensee to expend significantly more funds for security requirements than other source and byproduct facilities. Therefore, compliance with 10 CFR Part 73 would result in costs significantly in excess of those incurred by others similarly situated. Based on the above, the NRC has determined that the lack of the fuel and blanket material containing SNM at the 10 CFR Part 50 licensed site constitutes special circumstances. The possession and responsibility for the security of the SNM was transferred to the AEC and is no longer the responsibility of the licensee. Therefore, protection of the SNM is no longer a requirement of the licensee's 10 CFR Part 50 license. With no SNM to protect, there is no need for a safeguards contingency plan or procedures, physical security plan, guard training and qualification plan, or cyber security plan for the Fermi-1, 10 CFR Part 50 licensed site.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR

50.12(a), an exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security based on the continued maintenance of appropriate security requirements for the SNM. Additionally, special circumstances are present based on the removal of the spent nuclear fuel and blanket material from the 10 CFR Part 50 licensed site. Therefore, the Commission hereby grants DTE an exemption from the requirements of 10 CFR 50.54(p) at Fermi 1.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, an exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest based on the security requirements for the spent fuel and blanket material containing SNM no longer being the responsibility of the licensee. Therefore, the Commission hereby grants DTE an exemption from the physical protection requirements of 10 CFR Part 73 at Fermi 1.

The Commission has determined that this licensing action meets the categorical exclusion provision in 10 CFR 51.22(c)(25), as this action is an exemption from the requirements of the commission's regulations and (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (iv) there is no significant increase in the potential for or consequences from radiological accidents; and (v) the requirements from which an exemption is sought involve safeguard plans. Therefore, this action does not require either an environmental assessment or an environmental impact statement.

These exemptions are effective immediately.

Dated at Rockville, Maryland, October 8, 2010.

For The Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

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