

**NATIONAL SCIENCE FOUNDATION****Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978**

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 7, 2011. This application may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Polly A. Penhale at the above address or (703) 292-7420.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. *Applicant:* Permit Application No. 2012-005, George Watters, Director, U.S. AMLR Program, Southwest Fisheries Science Center, NOAA, 8604 La Jolla Shores Drive, La Jolla, CA 92037.

*Activity for Which Permit is Requested:* Take, Enter an Antarctic Specially Protected Area, and Import into the USA. The applicant plans to census, photo, capture/restrain, measure, weigh, tag, instrument (TDR, VHF, GLS, GPS, PTT, and/or PIT), anesthesia, sample collection (blood,

hair, nail, fecal, skin biopsy, vibrissae, tooth, milk, scat, and IV/IM injections (including DLW) up to 200 adult/juvenile and 600 pup Antarctic fur seals, 50 adult/juvenile Leopard seals, 50 adult/juvenile and 100 pup Southern elephant seals, and 30 adult/juvenile and 20 pup Weddell seals as part of a long-term ecosystem monitoring program established in 1986 studying the foraging ecology, population dynamics, census and reproductive success and energetic of Antarctic seals.

In addition, the applicant will continue studies of the behavioral ecology and population biology of the Adelie, Gentoo and Chinstrap penguins, and interactions among these species and their principal avian predators (skuas, gulls, sheathbills and giant petrels). Up to 2000 Chinstraps, 1500 Adelie, 2700 Gentoo penguins, 250 Brown skua, 350 South polar skua, 600 Giant petrel, 100 Kelp gulls, 150 Blue-eyed shag, 20 Snowy sheathbills, and 200 Cape Petrels will be banded, measured, eggs collected, blood sampled, fecal and feathers sampled. After sample collection, all birds will be released.

*Location:* ASPA 149-Cape Shirreff and San Telmo Island, ASPA 128-Western Shore of Admiralty Bay, and ASPA 151-Lions Rump, Antarctic Peninsula region.

*Dates:* October 1, 2011 to July 30, 2016.

**Nadene G. Kennedy,**

*Permit Officer, Office of Polar Programs.*

[FR Doc. 2011-19961 Filed 8-5-11; 8:45 am]

**BILLING CODE 7555-01-P**

**NUCLEAR REGULATORY COMMISSION**

[Docket No. 50-171; NRC-2011-0141]

**Exelon Nuclear, Peach Bottom Atomic Power Station, Unit 1; Exemption From Certain Security Requirements****1.0 Background**

Exelon Nuclear is the licensee and holder of Facility Operating License No. DPR-12 issued for Peach Bottom Atomic Power Station (PBAPS), Unit 1, located in York County, PA. PBAPS Unit 1 is a permanently shut down nuclear reactor facility. PBAPS Unit 1 was a high-temperature, gas-cooled reactor that was operated from June of 1967 to its final shutdown on October 31, 1974. All spent fuel has been removed from the site, and the spent fuel pool is drained and decontaminated. The reactor vessel, primary system piping, and steam

generators remain in place. The facility is permanently shut down in a SAFSTOR condition, defueled and Exelon is no longer authorized to operate or place fuel in the reactor. PBAPS Unit 1 is currently licensed pursuant to Section 104(b) of the Atomic Energy Act of 1954, as amended, and 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities," to possess but not operate the facility.

All residual radioactivity from the final decommissioned plant configuration is contained within the PBAPS Unit 1 Containment and Spent Fuel Pool Buildings. Within the Containment Building, more than 99.9 percent of the estimated 0.2 megacuries of radioactivity is contained inside the reactor vessel in the form of induced activity in the vessel walls, reactor internals and control rod couplings (Reference 4). The reactor vessel is contained inside the reactor vessel cavity and is accessible only by removing the concrete missile shields, the refueling port flanges and the refueling port shield plugs. The missile shields can only be removed with the building crane which is electrically deactivated.

**2.0 Action**

Section 50.54(p)(1) of Title 10 of the *Code of Federal Regulations* (10 CFR) states in part, "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 10 CFR, "Physical Protection of Plant and Materials," provides in part in 73.1(a), "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 U.S. Nuclear Regulatory Commission (NRC or the Commission) 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 licensees 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 2, 2010, the NRC informed Exelon Nuclear of the applicability of the revised rule and stated that it would have to evaluate the applicability of the regulation to its facility and either make appropriate changes or request an exemption.

By letter dated November 18, 2010, Exelon Nuclear responded to the NRC's letter and requested exemptions from the security requirements in 10 CFR part 73 and 10 CFR 50.54(p).

### 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, for example, when application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or 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, upon application of any interested person or upon its own initiative, grant exemptions from the regulations in Part 73 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 purpose of the security requirements of 10 CFR part 73, as applicable to a 10 CFR part 50 licensed facility, is to prescribe requirements for a facility that possesses and utilizes special nuclear material (SNM). The transfer of the PBAPS Unit 1 spent nuclear fuel to the Idaho National Engineering and Environmental Laboratory (INEEL) for reprocessing was

completed on February 17, 1977. With the completion of the fuel transfer, there is no longer any SNM located within PBAPS Unit 1 other than that contained in plant systems as residual contamination.

The remaining radioactive material is in a form that does not pose a risk of removal (*i.e.*, an intact reactor pressure vessel) and is well dispersed and is not easily aggregated. With the removal of the fuel 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 PBAPS Unit 1 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 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 removal of the fuel 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 INEEL 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 PBAPS Unit 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 remaining SNM contained in plant systems as residual contamination. Additionally, special circumstances are present based on the removal of the spent nuclear fuel from

the 10 CFR part 50 licensed site. Therefore, the Commission hereby grants Exelon Nuclear an exemption from the requirements of 10 CFR 50.54(p) at PBAPS Unit 1.

The Commission has also 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 because the security requirements for the spent fuel containing SNM are no longer the responsibility of the licensee. Therefore, the Commission hereby grants Exelon Nuclear an exemption from the fixed site physical protection requirements of 10 CFR part 73 at PBAPS Unit 1. The fixed site physical protection requirements of 10 CFR part 73 are delineated in §§ 73.20, 74.40, 73.45, 73.46, 73.50, 73.51, 73.54, 73.55, 73.56, 73.57, 73.58, 73.59, 73.60, 73.61, 73.67, Appendix B and Appendix C. The requirements for protection of safeguards information, physical protection of SNM in transit, and records and reports, contained in these or other sections of Part 73 continue to apply. To the extent that the licensee's request for an exemption from 10 CFR part 73 included the requirements other than for the fixed site physical protection requirements, that request is denied.

Part of this licensing action meets the categorical exclusion provision in 10 CFR 51.22(c)(25), as part of 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; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve safeguard plans. Therefore, this part of the action does not require either an environmental assessment or an environmental impact statement.

Pursuant to 10 CFR 51.21, 51.32, and 51.35, an environmental assessment and finding of no significant impact related to part of this exemption was published in the **Federal Register** on June 28, 2011 (76 FR 37842). Based upon the environmental assessment, the Commission has determined that issuance of this exemption will not have a significant effect on the quality of the human environment.

These exemptions are effective immediately.

Dated at Rockville, Maryland, this 1st day of August 2011.

For the U.S. 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.*

[FR Doc. 2011-20016 Filed 8-5-11; 8:45 am]

BILLING CODE 7590-01-P

---

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65013; File No. SR-NASDAQ-2011-103]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Market Center

August 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on July 27, 2011, The NASDAQ Stock Market LLC (the “Exchange” or “NASDAQ”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement the proposed change on August 1, 2011. The text of the proposed rule change is available from NASDAQ’s Web site at <http://nasdaq.cchwallstreet.com>, at NASDAQ’s principal office, at the Commission’s Public Reference Room, and at the Commission’s Web site at <http://www.sec.gov>.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

NASDAQ is amending Rule 7018 to make modifications to its pricing schedule for execution of quotes/orders through the NASDAQ Market Center of securities priced at \$1 or more. Specifically, NASDAQ has several liquidity provider rebate tiers focused on members that are active in both the NASDAQ Stock Market and the NASDAQ Options Market. Currently, a member that provides shares of liquidity in the NASDAQ Market Center representing 0.9% or more of the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during the month, and trades a daily average of more than 300,000 contracts in the NASDAQ Options Market during the month, is eligible to receive a rebate of \$0.0015 per share executed for its non-displayed quotes/orders and \$0.00295 per share executed for its displayed quotes/orders. NASDAQ is modifying the tier requirements slightly to require liquidity in the NASDAQ Market Center representing more than 1.0% of total consolidated volume, and an average daily volume of more than 200,000 contracts in the NASDAQ Options Market. Although NASDAQ is raising the requirement for liquidity provision in the NASDAQ Market Center and lowering the requirement for NASDAQ Options Market activity, it is NASDAQ’s expectation, based on observed trading patterns in the market, that the change will make it easier for members to achieve the criteria for the tier, and therefore will result in a price reduction.

###### 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the

provisions of Section 6 of the Act,<sup>3</sup> in general, and with Section 6(b)(4) of the Act,<sup>4</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. All similarly situated members are subject to the same fee structure, and access to NASDAQ is offered on fair and non-discriminatory terms.

NASDAQ notes that its pricing tiers focused on members active in both the NASDAQ Market Center and the NASDAQ Options Market are responsive to the convergence of trading in which members simultaneously trade different asset classes within a single strategy. NASDAQ also notes that cash equities and options markets are linked, with liquidity and trading patterns on one market affecting those on the other. Accordingly, pricing incentives that encourage market participant activity in both markets recognize that activity in the options markets also supports price discovery and liquidity provision in the NASDAQ Market Center. Moreover, NASDAQ believes that these changes are reasonable because they will make it easier for members active in both markets to qualify for an enhanced rebate, and are also non-discriminatory and equitable. They are open to all members, but are not the exclusive means by which members may qualify for the associated rebate levels. Accordingly, members are not required to trade in the NASDAQ Options Market in order to receive the applicable rebates.

Finally, NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. NASDAQ believes that the proposed rule change reflects this competitive environment because it will broaden the conditions under which members may qualify for higher liquidity provider rebates.

##### B. Self-Regulatory Organization’s Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78f.

<sup>4</sup> 15 U.S.C. 78f(b)(4).