

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-285; NRC-2010-0087]

### Omaha Public Power District, Fort Calhoun Station, Unit 1; Exemption

#### 1.0 Background

Omaha Public Power District (OPPD or the licensee) is the holder of Facility Operating License No. DPR-40 which authorizes operation of the Fort Calhoun Station, Unit 1 (FCS). 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 or the Commission) now or hereafter in effect.

The facility consists of one pressurized-water reactor located in Washington County, Nebraska.

#### 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 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 programs. The amendments to 10 CFR 73.55 published in the **Federal Register** on March 27, 2009 (74 FR 13926), 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 three of these new requirements that OPPD originally sought an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have been implemented by the licensee.

By letter dated December 31, 2009, as supplemented by letter dated January 21, 2010, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." Portions of the licensee's letters dated December 31, 2009, and January 21, 2010, contain sensitive unclassified non-safeguards information (SUNSI) (security-related) and, accordingly, those portions are

being withheld from public disclosure. Publicly available versions of the licensee's letters dated December 31, 2009, and January 21, 2010 are available in the Agencywide Documents Management and Access System (ADAMS) at Accession Nos. ML100050032 and ML100810124, respectively. By letter dated March 23, 2010 (ADAMS Accession No. ML100630447), the NRC granted a previous exemption to OPPD for specific items subject to the revised rule in 10 CFR 73.55, allowing the implementation to be deferred until October 5, 2011.

Subsequent to issuance of the scheduler exemption and prior to completion of the planned physical protection program upgrades, FCS experienced sustained flooding conditions beginning in the spring and continuing through the summer of 2011. These abnormal flooding conditions required the cessation of all work needed to complete the planned physical protection program upgrades at FCS and necessitated the diversion of all available resources to perform essential emergency operations and other compensatory measures. These actions are deemed necessary 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.

By letter dated September 2, 2011, the licensee submitted a request for a scheduler exemption to the compliance date identified in 10 CFR 73.55(a)(1) to implement two of the original three requirements stated in 10 CFR part 73 for FCS. Portions of the September 2, 2011, letter contain SUNSI (security-related) and, accordingly, those portions are withheld from public disclosure. A redacted version of the licensee's letter dated September 2, 2011, is available in ADAMS Accession No. ML11250A059. In its letter dated September 2, 2011, the licensee stated that FCS will complete one of the projects by October 5, 2011, and the new requested compliance date for the remaining two requirements is November 5, 2013.

By e-mail dated September 28, 2011, the NRC staff requested additional information from the licensee. The NRC request contained SUNSI (security-related) and, accordingly, is withheld from public disclosure. By letter dated September 30, 2011, the licensee responded to the NRC request for additional information. Portions of the licensee's letter dated September 30, 2011, contain SUNSI (security-related) and, accordingly, those portions are withheld from public disclosure. A

redacted version of the licensee's letter dated September 30, 2011, is available in ADAMS Accession No. ML112760629. In its letter dated September 30, 2011, FCS stated that interim security measures can be, and will be taken to achieve compliance with one of the remaining two requirements that were addressed in its letter dated September 2, 2011, leaving only one requirement for which compliance cannot be met. Therefore, the licensee requested a scheduler exemption for one requirement until November 5, 2013. Granting this exemption for extending the implementation date for the one remaining item would allow the licensee to complete the modifications for a more conservative approach for achieving full compliance.

#### 3.0 Discussion of Part 73 Schedule Exemptions From the October 5, 2011, 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 73.55(b)(1), "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." 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 October 5, 2011, until November 5, 2013, of 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 part 73. The NRC staff has determined that granting of the licensee's proposed exemption will 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 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 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 as documented in the letter from R. W. Borhardt (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 NRC letter dated June 4, 2009.

#### *FCS Schedule Exemption Request*

The licensee provided detailed information in the enclosure/attachment to its letters dated September 2 and 30, 2011, requesting an exemption. The licensee is requesting additional time to implement one specific requirement of the new rule due to sustained abnormal flooding conditions throughout the spring and summer of 2011. The flooding conditions required the cessation of all work needed to complete the planned enhancements to FCS's physical protection program and necessitated diversion of all available resources to perform essential emergency operations and other compensatory measures. The length of the extension is due to flood damage and the amount of engineering and design, material procurement, and construction and installation activities involved, while allowing for inclement weather. The licensee's submittals describe a comprehensive plan to upgrade the security capabilities of the FCS site and provide a timeline for achieving full compliance with the new regulation. The enclosure/attachment to the licensee's letters contain SUNSI

(security-related) regarding the site security plan, details of the specific requirement of the regulation that the site cannot be in compliance with by the October 5, 2011 deadline, and a timeline with critical path activities that will bring the licensee into full compliance by November 5, 2013. The timeline provides milestone dates for engineering, planning and procurement, implementation, startup and testing, engineering closeout, and project closeout. Redacted versions of the licensee's letters dated September 2 and 30, 2011, including the enclosure/attachment, are publicly available at ADAMS Accession Nos. ML11250A059 and ML112760629, respectively.

Notwithstanding the schedular exemptions for this limited requirement, 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 November 5, 2013, FCS 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 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 one specified requirement of 10 CFR 73.55 until November 5, 2013.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," exemption from the October 5, 2011, 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 staff has determined that the long-term benefits that will be realized when the FCS security modifications are complete justifies exceeding the full compliance date with regard to the specified requirements of 10 CFR 73.55. 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 October 5, 2011, deadline for the one item specified in the enclosure/attachment to FCS's letters dated September 2 and 30, 2011, the licensee is required to be in full compliance with 10 CFR 73.55 by November 5, 2013. 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 (January 3, 2011; 76 FR 187).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 5th day of October 2011.

For the Nuclear Regulatory Commission.

**Michele G. Evans,**

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

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## **NUCLEAR REGULATORY COMMISSION**

[Docket No. 70-7022; NRC-2011-0236]

### **Notice of Acceptance of Application for Special Nuclear Materials License From Passport Systems, Inc., Opportunity To Request a Hearing, and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of license application, opportunity to request a hearing, and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation.

**DATES:** Requests for a hearing or Leave to Intervene must be filed by December 12, 2011. Any potential party as defined in Title 10 of the *Code of Federal Regulations* (10 CFR) 2.4 who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) information is necessary to respond to this notice must request document access by October 24, 2011.

**ADDRESSES:** You can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.