

needs to be prepared in connection with the issuance of this exemption.

5.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the 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. Also, special circumstances are present. Therefore, the Commission hereby grants Energy Northwest a one-time exemption from 10 CFR Part 50, Section 50.36a(a)(2) to submit the 2012 ARERR prior to May 1, 2013, for the Columbia Generating Station.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 21st day of December 2012.

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. 50-293; NRC-2012-0311]

Entergy Nuclear Operations, Inc.; Pilgrim Nuclear Power Station; Exemption

1.0 Background

Entergy Nuclear Operations, Inc. (the licensee) is the holder of Renewed Facility Operating License No. DPR-35, which authorizes operation of the Pilgrim Nuclear Power Station (PNPS).

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 a boiling-water reactor located in Plymouth, Massachusetts.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), Part 50, Appendix E, Section IV.F.2.c, requires that "Offsite plans for each site shall be exercised biennially with full participation by each offsite authority having a role under the radiological response plan." By letter dated November 29, 2012, the licensee requested a one-time exemption from this requirement that would allow the licensee to delay conduct of the offsite portions of a biennial emergency preparedness (EP) exercise from November 7, 2012, to March 2013. The licensee's request states that on October 29, 2012, Hurricane Sandy passed through the East Coast of the United States, impacting Washington DC, the States of Maryland, New Jersey, New York, Connecticut, and Rhode Island, and the Commonwealth of Massachusetts, causing widespread devastation and flooding throughout the surrounding areas. This hurricane event resulted in a multi-agency emergency response, which included the Federal Emergency Management Agency (FEMA), the Massachusetts Emergency Management Agency (MEMA), and the local town officials in the Pilgrim Emergency Planning Zone (EPZ). The licensee further states that immediate and long-term resource commitments were needed to recover from the hurricane

event, and as a result, FEMA, MEMA, and local town resources did not participate in the previously planned and scheduled Pilgrim Biennial Exercise that was conducted on November 7, 2012. Consequently, the requirement of 10 CFR part 50, Appendix E, Section IV.F.2.c, for a full participation of offsite authorities during the biennial exercise was not satisfied.

Based on discussions with FEMA and MEMA representatives, the licensee does not consider it feasible to schedule and perform a full participation biennial exercise prior to the end of calendar year (CY) 2012. In an email from FEMA to the licensee dated November 26, 2012, FEMA Region I acknowledged agreement with the Commonwealth of Massachusetts that offsite portions of the Pilgrim biennial exercise can be scheduled for and conducted on March 21, 2013. The email was submitted as an attachment to the licensee's application dated November 29, 2012.

The onsite portion of the exercise was conducted as scheduled on November 7, 2012, and was inspected by the NRC under Inspection Procedure No. 71114.01. The NRC's inspection of the licensee's conduct and self-evaluation of the exercise identified no findings. Out-of-sequence demonstrations for various schools, daycare centers, special facilities, and camps were also conducted and evaluated during FEMA Region I staff visits between the months of July 2012 and September 2012, in accordance with the November 2012 biennial exercise objectives and extent of play. In addition, the following out-of-sequence demonstrations were evaluated by FEMA Region I since the previous PNPS Biennial Exercise conducted on November 16, 2010:

Radiological Emergency Worker Monitoring and Decontamination Center .....	August 23, 2011.
	August 7, 2012.
Quincy Medical Center Medical Service Drill .....	October 5, 2011.
KIDS Site Brockton High School .....	January 26, 2012.

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, Appendix E, 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.

Authorized by Law

This exemption would allow the licensee and offsite response

organizations to accommodate Hurricane Sandy's impact upon their resources by postponing the offsite portion of the exercise from the previously scheduled date of November 7, 2012, until March 2013.

As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50, Appendix E. The NRC 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.

No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR part 50, Appendix E, Section IV.F.2.c, is to ensure that licensees test and maintain interfaces among themselves and affected State and local authorities during the intervals between biennial exercises by conducting emergency preparedness activities and interactions. In order to accommodate the scheduling of full participation exercises, the NRC has allowed licensees to schedule the exercises at any time during the calendar biennium. Conducting the remaining offsite portions of the PNPS

full participation exercise by March 2013, rather than in CY 2012, places the exercise outside of the required biennium. Since the last biennial EP exercise on November 16, 2010, the licensee has conducted two full-scale combined functional drills/dryruns involving onsite and offsite functions in preparation for the scheduled November 7, 2012 biennial exercise, as well as, numerous documented training evolutions supported through the Commonwealth of Massachusetts, local EPZ and Reception Community Offices of Emergency Management and support organizations. In addition, the Commonwealth of Massachusetts participated in two FEMA-evaluated exercises in conjunction with the Vermont Yankee Nuclear Power Plant and Seabrook Nuclear Power Plant, on February 9, 2011 and January 24, 2012, respectively, along with multiple practice drills/tabletop related to each evaluated exercise. While these drills and training sessions did not exercise all of the proposed rescheduled offsite functions, they support the licensee's assertion that it has had a continuing level of engagement with the State and local authorities to maintain licensee/governmental interfaces. The NRC considers the intent of this requirement is met by having conducted these drills and training sessions.

The NRC has determined that no new accident precursors are created by allowing the licensee to postpone the selected offsite portions of the exercise from CY 2012 until March 2013. Further, the probability and consequences of postulated accidents are not increased. Therefore, the exemption does not create undue risk to public health and safety.

#### *Consistent With Common Defense and Security*

The proposed exemption would allow rescheduling of the specific offsite portions of the biennial EP exercise from the previously scheduled date of November 7, 2012, until March 2013. This change to the EP exercise schedule has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

#### *Special Circumstances*

In order to grant exemptions in accordance with 10 CFR 50.12, special circumstances must be present. Special circumstances as described in 10 CFR 50.12 that apply to this exemption request are stated in 10 CFR 50.12(a)(2)(ii) and (v). Special circumstances, per 10 CFR 50.12(a)(2)(ii), are present when:

“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.” Section IV.F.2.c of 10 CFR part 50, Appendix E requires licensees to exercise offsite plans biennially with full or partial participation by each offsite authority having a role under the plan. The underlying purposes of 10 CFR part 50, Appendix E, Section IV.F.2.c, requiring licensees to exercise offsite plans with offsite authority participation, is to test and maintain interfaces among affected State and local authorities and the licensee. No deficiencies were identified by FEMA during the previous PNPS biennial exercise, conducted on November 16, 2010, as documented in the PNPS After Action Report/Improvement Plan, published by FEMA on January 26, 2011 (ADAMS Accession No. ML11223A279).

Under 10 CFR 50.12(a)(2)(v), special circumstances are present whenever the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation. Since the previous biennial exercise on November 16, 2010, the licensee has conducted two full-scale combined functional drills/dryruns involving onsite and offsite functions in preparation for the scheduled November 7, 2012 biennial exercise, as well as, numerous documented training evolutions that involved interface with State and local authorities in 2011 and 2012. The NRC considers that these measures are adequate to test and maintain interfaces with affected State and local authorities during this period, satisfying the underlying purpose of the rule. As such, the NRC considers the licensee to have made good faith efforts to comply with the regulation. Also, the requested exemption to conduct the offsite portion of the PNPS Biennial Exercise in March 2013 instead of CY 2012 would grant only temporary relief from the applicable regulation. Therefore, since the underlying purpose of 10 CFR part 50, Appendix E, Section IV.F.2.c, is achieved, the licensee has made a good faith effort to comply with the regulation, and the exemption would grant only temporary relief from the applicable regulation. The special circumstances required by 10 CFR 50.12(a)(2)(ii and v) exist for the granting of an exemption.

#### **4.0 Conclusion**

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the 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. Also, special circumstances are present consistent with 10 CFR 50.12. Therefore, the Commission hereby grants Entergy Nuclear Operations, Inc. an exemption from the requirements of 10 CFR Part 50, Appendix E, Section IV.F.2.c, to conduct the offsite portion of the PNPS Biennial Exercise required for 2012, permitting that part of the exercise to be conducted in coordination with NRC Region I, FEMA, and PNPS schedules by the end of March 2013.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (77 FR 76541, December 28, 2012).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 28th day of December 2012.

For the Nuclear Regulatory Commission.

**Jessie F. Quichocho,**

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

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68547; File No. SR-NYSEArca-2012-120]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change To List and Trade Shares of the United States Asian Commodities Basket Fund Under NYSE Arca Equities Rule 8.200**

December 28, 2012.

#### **I. Introduction**

On October 25, 2012, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to list and trade shares (“Shares”) of the United States Asian Commodities Basket Fund (“Fund”) under NYSE Arca Equities Rule 8.200. The proposed rule change was published for comment in the **Federal**

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

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