

established by Equitable for the investment of employee benefit plan assets in real estate related investments to the extent disposition of its assets is subject to the discretionary authority of Equitable.

(2) Equitable—For purposes of this exemption, the term Equitable includes Equitable and/or affiliates of Equitable as defined in paragraph (4) of this section which act as investment managers with respect to an Account.

(3) ERE—For purposes of this exemption, the term ERE includes ERE and/or affiliates of ERE as defined in paragraph (4) of this section, which provides services to an Account pursuant to this exemption.

(4) An affiliate of a person means any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person.

(5) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(6) Independent Fiduciary—A person who:

(a) Is not an affiliate [as defined in Section IV(4)] of Equitable or ERE;

(b) Is not an officer, director, employee of, or partner in, Equitable or ERE [or affiliates thereof as defined in Section IV(4)];

(c) Is not a corporation or partnership in which Equitable or ERE has an ownership interest or is a partner;

(d) Does not have an ownership interest in Equitable or ERE, or its affiliates;

(e) Is not a fiduciary with respect to any plan participating in an Account; and

(f) Has acknowledged in writing acceptance of fiduciary obligations and has agreed not to participate in any decision with respect to any transaction in which the Independent Fiduciary has an interest that might affect its best judgment as a fiduciary.

For purposes of this definition of Independent Fiduciary, no organization or individual may serve as an Independent Fiduciary for any fiscal year if the gross income received by such organization or individual (or partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder) from Equitable or ERE, or their affiliates, (including amounts received for services as Independent Fiduciary under any prohibited transaction exemption granted by the Department) for that fiscal year exceeds 5 percent of its or his

annual gross income from all sources for such fiscal year.

In addition, no organization or individual who is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or 10 percent or more partner or shareholder, may acquire any property from, sell any property to or borrow any funds from Equitable or ERE, their affiliates, or any Account maintained by Equitable or ERE, their affiliates, during the period that such organization or individual serves as an Independent Fiduciary and continuing for a period of 6 months after such organization or individual ceases to be an Independent Fiduciary or negotiates any such transaction during the period that such organization or individual serves as Independent Fiduciary.

This exemption is subject to the express condition that the summary of facts and representations set forth in the notice of proposed exemption relating to PTE 91-8 (40 FR 7057/7069), as amended by the notice of proposed exemption to make permanent as modified PTE 91-8 (61 FR 47205/47214) and the written comments submitted in response thereto, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

Signed at Washington, DC, this 18th day of June, 1997.

**Ivan Strasfeld,**

*Director of the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.*

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## NUCLEAR REGULATORY COMMISSION

### Docket No. 50-368

#### In the Matter of Entergy Operations, Inc. (Arkansas Nuclear One, Unit 2)

##### Exemption I

Entergy Operations, Inc. (the licensee) is the holder of Facility Operating License No. NPF-6, which authorizes operation of Arkansas Nuclear One, Unit 2 (ANO-2). The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two pressurized water reactors, Arkansas Nuclear One, Units 1 and 2, located at the licensee's site in Pope County, Arkansas.

## II

In its letter dated December 23, 1996, the licensee requested an exemption from certain requirements in Title 10 of the Code of Federal Regulations, Part 50, Appendix R, Section III.O, for ANO-2.

## III

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 whenever, according to 10 CFR 50.12(a)(2)(ii), "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. \* \* \*"

10 CFR Part 50, Appendix R, Section III.O requires that the reactor coolant pump (RCP) shall be equipped with an oil collection system if the containment is not inerted during normal operation. The oil collection system shall be so designed, engineered, and installed that failure will not lead to fire during normal or design basis accident conditions and that there is reasonable assurance that the system will withstand the Safe Shutdown Earthquake. The underlying purpose of 10 CFR Part 50, Appendix R, Section III.O is to ensure that leaking oil will not lead to a fire which could damage safe shutdown systems during normal or design basis accident conditions.

On the basis of the enclosed safety evaluation, the U. S. Nuclear Regulatory Commission (NRC) staff concluded that the design of the oil filling system and the level of protection provided by the licensee through the use of certain compensatory measures during oil fill operations provides reasonable assurance that a lube oil fire will not occur. The staff also concluded that a worst-case postulated fire, due to not having a lube oil collection system for the RCP lube oil fill lines, would be of limited magnitude and extent. In addition, such a fire would not cause significant damage in the containment building and would not prevent the operators from achieving and maintaining safe shutdown conditions. The staff concluded, therefore, that the lack of an oil collection system for the RCP lube oil fill lines is an acceptable exemption from the technical

requirements of 10 CFR Part 50, Appendix R, Section III.O.

#### IV

Therefore, contingent on the use of the compensatory measures that are itemized in the licensee's December 23, 1996, exemption request, the NRC staff has concluded that the licensee's proposed use of the remote oil addition system will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2), in that application of 10 CFR Part 50, Appendix R, Section III.O is not necessary in order to achieve the underlying purpose of this regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants an exemption from the requirements of 10 CFR Part 50, Appendix R, Section III.O to the extent that the RCP lube oil fill lines are required to be protected with a collection system.

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 (62 FR 19632).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 14th day of June 1997.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

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## NUCLEAR REGULATORY COMMISSION

[Docket 70-7001]

### Notice of Amendment to Certificate of Compliance GDP-1 for the U.S. Enrichment Corporation Paducah Gaseous Diffusion Plant; Paducah, KY

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination the staff concluded that: (1) There is no change in the types or significant increase in

the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs. The basis for this determination for the amendment request is shown below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Paducah Gaseous Diffusion Plant. The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the Decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) The interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the

designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the Decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** notice.

A petition for review must be filed with the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

For further details with respect to the action see: (1) The application for amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room.

*Date of amendment request:* March 4, 1997.

*Brief description of amendment:* The proposed amendment will revise the Compliance Plan and the Fundamental Nuclear Materials Control (FNMC) Plan so that they are consistent in the area of dimensional measurement calculations to determine system volumes.

*Basis for finding of no significance:*

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

There are no effluent releases associated with this change, the proposed changes will not affect the effluent.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

The proposed changes do not relate to controls used to minimize occupational radiation exposures, therefore, the changes will not increase exposure.

3. The proposed amendment will not result in a significant construction impact.

The proposed changes will not result in any construction, therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

The proposed changes do not involve a change to any previously analyzed