

Commission (the Commission) now or hereafter in effect.

The facilities consist of pressurized water reactors located on Duke's Oconee site in Seneca, Oconee County, South Carolina.

## II

The proposed action is in accordance with the licensee's application for exemption contained in a submittal dated September 15, 1999, and is needed to allow the use of Framatome Cogema Fuels (FCF) "M5" advanced alloy as a fuel rod cladding material. This exemption is necessary since the chemical composition of M5 differs from the Zircaloy and ZIRLO cladding material specified in 10 CFR 50.44, 10 CFR 50.46, and Appendix K of 10 CFR Part 50. These regulations contain acceptance and analytical criteria regarding the light water nuclear reactor system performance during and following a postulated loss-of-coolant accident (LOCA). These regulations assume the use of only two types of fuel cladding material, Zircaloy and ZIRLO. However, the licensee has requested use of FCF M5 advanced alloy for fuel rod cladding at Oconee. The M5 alloy is a proprietary zirconium-based alloy comprised of primarily zirconium (~99 percent) and niobium (~1 percent). The elimination of tin has resulted in superior corrosion resistance and reduced irradiation-induced growth relative to both standard Zircaloy (1.7 percent tin) and low-tin Zircaloy (1.2 percent tin). The addition of niobium increases ductility, which is desirable to avoid brittle failures. Since the chemical composition of the M5 alloy differs from the specifications for Zircaloy or ZIRLO, a plant specific exemption is required to allow the use of the M5 alloy as a fuel cladding material at Oconee.

## III

Section 50.12 of Title 10 of the Code of Federal Regulations, "Specific Exemptions," states, among other items, that the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present where 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.

The underlying purpose of 10 CFR 50.46 is to ensure that facilities have adequate acceptance criteria for emergency core cooling systems (ECCS). In its topical report BAW-10227-P, "Evaluation of Advanced Cladding and Structural Material (M5) in PWR Reactor Fuel," FCF demonstrated that the ECCS acceptance criteria applied to reactors fueled with Zircaloy clad fuel are also applicable to reactors fueled with M5 fuel rod cladding. The topical report (which was approved by the staff on February 4, 2000) also showed that the M5 fuel cladding was capable of satisfying this design and acceptance criteria. Therefore, the underlying purpose of 10 CFR 50.46 is achieved through the use of M5 as a fuel rod cladding material.

The underlying purposes of 10 CFR 50.44 and Appendix K to 10 CFR Part 50, paragraph I.A.5, are to ensure that the cladding oxidation and hydrogen generation are appropriately limited during a LOCA and conservatively accounted for in the ECCS evaluation model. Specifically, Appendix K requires that the Baker-Just equation (which assumes zirconium as the cladding material) be used in the ECCS evaluation model to determine the rate of energy release, hydrogen generation, and cladding oxidation from the metal/water reaction. In their topical report, FCF demonstrated that the Baker-Just model is conservative in all post-LOCA scenarios with respect to the use of M5 advanced alloy as a fuel rod cladding material. Therefore, the underlying purposes of 10 CFR 50.44 and 10 CFR Part 50 Appendix K, paragraph I.A.5 are achieved through the use of M5 as a fuel rod cladding material.

Because there are properties of M5 that differ from the specifications for Zircaloy or ZIRLO, which are referenced in the regulations, the staff has determined that an exemption would be required to allow the use of M5 as a fuel rod cladding material. The proposed action would not exempt the licensee from complying with the acceptance and analytical criteria of 10 CFR 50.44, 10 CFR 50.46 and Appendix K to 10 CFR Part 50 applicable to the cladding. The exemption would only allow the application of the criteria set forth in these regulations to the M5 cladding material.

Since the acceptance and analytical criteria set forth in the applicable regulations would continue to be applicable to the M5 fuel cladding, the staff has concluded that the proposed exemption is authorized by law, does not present an undue risk to the public

health and safety, and is consistent with the common defense and security.

Further, since the underlying purposes of 10 CFR 50.44, 10 CFR 50.46, and 10 CFR Part 50, Appendix K are achieved through the use of the M5 advanced alloy as a fuel rod cladding material, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of exemptions to 10 CFR 50.44, 10 CFR 50.46, and 10 CFR Part 50, Appendix K exist. Therefore, the staff concludes that the proposed exemption to 10 CFR 50.44, 10 CFR 50.46, and Appendix K of 10 CFR Part 50 related to the fuel cladding material for Oconee Nuclear Station Units 1, 2, and 3 is acceptable.

## IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the 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 Duke an exemption from the requirements of 10 CFR 50.44, 10 CFR 50.46, and Appendix K of 10 CFR Part 50, related to the fuel cladding material for the Oconee Nuclear Station, Units 1, 2, and 3.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant effect on the quality of the human environment (65 FR 15659).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 23rd day of March 2000.

For the Nuclear Regulatory Commission.

**John A. Zwolinski,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-305]

### **Wisconsin Public Service Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License DPR-43; Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License DPR-43 issued to Wisconsin Public Service

Corporation (the licensee) for operation of the Kewaunee Nuclear Power Plant, located in Kewaunee County, Wisconsin.

The proposed amendment would change Technical Specification (TS) 3.8.a.5 to increase the minimum refueling boron concentration value to 2200 parts per million (ppm) from 2100 ppm. The increase in boron concentration is required to ensure 5%  $\Delta k/k$  shutdown margin during refueling due to the increased feed fuel loadings since the plant's change from 12 month to 18-month cycles in 1995.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does operation of the facility with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The refueling boron concentration value is not an accident initiator. Therefore, the change will not increase the probability of an accident previously evaluated. The proposed change to the refueling boron concentration value does not alter the plant configuration, operating set points, or overall plant performance. As was the case prior to the change, when there is fuel in the reactor, a 5%  $\Delta k/k$  shutdown margin will be maintained in the reactor coolant system during reactor vessel head removal or while loading and unloading fuel from the reactor.

2. Does operation of the facility with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change in the refueling boron concentration value does not alter the plant configuration, operating set points, or overall plant performance. The proposed change will ensure a 5%  $\Delta k/k$  shutdown margin will be maintained as currently described in TS. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does operation of the facility with the proposed amendment involve a significant reduction in a margin of safety?

The proposed change in the refueling boron concentration value continues to ensure that the current TS 3.8.a.5 shutdown requirement of 5%  $\Delta k/k$  shutdown margin will be maintained in the Reactor Coolant System during reactor vessel head removal or while loading and unloading fuel from the reactor. Design basis dilution events were re-evaluated with the proposed TS boron concentrations. It was determined that there remains a sufficient amount of time for the operator to recognize the event and stop the dilution. Therefore, this change will not involve a significant reduction in safety margin.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received

may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 1, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended

petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, 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 close of business on the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to Bradley D. Jackson, Foley and Lardner, P.O. Box 1497, Madison, WI 53701-1497, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 2, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>).

Dated at Rockville, Maryland, this 24th day of March 2000.

For the Nuclear Regulatory Commission.

**Beth A. Wetzel,**

*Acting Chief, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

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## **NUCLEAR REGULATORY COMMISSION**

**[Docket No. 50-255]**

### **Consumers Energy Company; Palisades Nuclear Plant; Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of Section III.O of Appendix R, 10 CFR Part 50 to Consumers Energy Company (the licensee), holder of Facility Operating License No. DPR-20, for operation of the Palisades Nuclear Plant, located in the town of Covert, Michigan, on the eastern shore of Lake Michigan.

## **Environmental Assessment**

### *Identification of the Proposed Action*

The proposed action would exempt the licensee from the requirement of Section III.O of Appendix R, 10 CFR Part 50, regarding the design capacity of the lubricating oil collection systems for three of the four primary coolant pump (PCP) motors. Specifically, the exemption would apply to the requirement that a vented container for the collection of leakage "can hold the entire lube oil system inventory." The proposed action does not apply to the collection system for PCP P-50D, which, as a result of modifications during the 1999 refueling outage, has been brought into compliance with Section III.O. The proposed action is in accordance with the licensee's application for an exemption dated August 13, 1999, as revised and supplemented by letters dated November 3, 1999, and March 15, 2000.

### *The Need for the Proposed Action*

Each of the four Palisades PCP motors has its own oil collection tank that receives the leakage from both the upper and lower bearing lubrication systems for that PCP motor. The usable volumes of the collection tanks for PCPs P-50A, P-50B, and P-50C, cannot hold the entire inventories of their respective lubricating oil systems as required by Section III.O of Appendix R, 10 CFR Part 50. By removing the need to modify or replace the oil collection tanks to meet the literal requirement of 10 CFR 50, Appendix R, Section III.O, the proposed action would avoid unnecessarily exposing workers to radiation. It would also spare resources.

### *Environmental Impacts of the Proposed Action*

Each oil collection tank for PCPs P-50A, P-50B, and P-50C has a nominal capacity of 79 gallons. Each pump motor nominally has 87 gallons of lubricating oil in the upper-bearing lubricating oil system and 18 gallons in the lower-bearing lubricating oil system, for a total of 105 gallons. The upper and lower lubricating oil systems are independent of each other.

In the unlikely event that operators allowed leakage in a PCP upper oil system to drain the entire system without taking action to stop the pump, approximately 8 gallons of oil could overflow the oil collection tank onto the floor in containment. Approximately 26 gallons could overflow onto the floor in the less likely event that both the upper and lower oil systems developed gross leakage and operators took no action.