

events of September 11, 2001.

Therefore, the NRC staff 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 to the March 31, 2010, deadline for the one item specified in the attachment to the Entergy letter dated January 19, 2010, the licensee is required to be in full compliance with 10 CFR 73.55 by November 15, 2010. 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 (75 FR 13798, dated March 23, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 23rd day of March 2010.

For the Nuclear Regulatory Commission.

**Joseph G. Giitter,**

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

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## **NUCLEAR REGULATORY COMMISSION**

**[Docket No. 50-341; NRC-2010-0099]**

### **Detroit Edison Company; Fermi 2; Exemption**

#### **1.0 Background**

Detroit Edison Company (the licensee) is the holder of Facility Operating License No. NPF-43, which authorizes operation of Fermi 2. 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 one boiling-water reactor located in Monroe County, Michigan.

#### **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 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 on March 27, 2009, 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 five of these new requirements that Fermi 2 now seeks an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have already been or will be implemented by the licensee by March 31, 2010.

By letter dated November 19, 2009, as supplemented by letter dated December 23, 2009, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's November 19, 2009, and December 23, 2009, letters, have certain portions which contain proprietary and safeguards information and, accordingly, are not available to the public. The licensee has requested an exemption from the March 31, 2010, compliance date stating that it must complete a number of significant modifications to the current site security configuration before all requirements can be met. Specifically, the request is to extend the compliance date for five requirements that would be in place by May 31, 2011, versus the March 31, 2010, deadline. Being granted this exemption for the five requirements would allow the licensee to complete the modifications designed to update aging equipment and incorporate state-of-the-art technology to meet or exceed the noted regulatory requirements.

#### **3.0 Discussion of Part 73 Schedule Exemptions From the March 31, 2010, 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 73.5, 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 exemption, as noted above, would allow an extension from March 31, 2010, to May 31, 2011, for the implementation date for five specified areas of the new rule. The NRC staff has determined that granting of the licensee's proposed exemption would 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 power reactor security rule provided 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 achieve 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 any such changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a generic industry request to 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 (Reference: June 4, 2009, letter, from R. W. Borchardt, NRC, to M.S. Fertel, Nuclear Energy Institute). The licensee's request for an exemption is therefore consistent with the approach set forth by the Commission and discussed in the June 4, 2009, letter.

#### **Fermi 2 Schedule Exemption Request**

The licensee provided detailed information in Enclosures 1 and 2 of its supplemental submittal to its November 19, 2009, letter, requesting an exemption. It describes a comprehensive plan which provides a

timeline for achieving full compliance with the new regulation. Enclosures 1 and 2 contain proprietary information regarding the site security plan, details of the specific requirements of the regulation for which the site cannot be in compliance by the March 31, 2010, deadline and why, the required changes to the site's security configuration, and a timeline with "critical path" activities that will enable the licensee to achieve full compliance by May 31, 2011. The timeline provides dates indicating when (1) construction will begin on various phases of the project (*i.e.*, new buildings and fences), and (2) critical equipment will be installed, tested and become operational.

Notwithstanding the schedule exemptions of these limited requirements, the licensee indicated that it 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 May 31, 2011, the licensee also stated that Fermi 2 will be in full compliance with 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 to May 31, 2011, with regard to five specified requirements of 10 CFR 73.55.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," an exemption from the March 31, 2010, 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 Fermi 2 modifications are completed justifies exceeding the full compliance date in the case of this particular licensee. The security measures Fermi 2 needs additional time to implement are new requirements imposed by March 27, 2009, amendments to 10 CFR 73.55, and are in addition to those currently required by the security orders issued in response to the events of September 11, 2001. 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 March 31, 2010, deadline for the five requirements specified in Enclosure 1 of the Detroit Edison letter dated December 23, 2009, the licensee is required to be in full compliance by May 31, 2011. 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 [75 FR 11946; dated March 12, 2010].

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 19th day of March 2010.

For the Nuclear Regulatory Commission.

**Allen G. Howe,**

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

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-416; NRC-2010-0082]

### Entergy Operations, Inc., Grand Gulf Nuclear Station, Unit 1; Exemption

#### 1.0 Background

Entergy Operations, Inc. (Entergy or the licensee), is the holder of Facility Operating License No. NPF-29 which authorizes operation of the Grand Gulf Nuclear Station, Unit 1 (GGNS). The license provides, among other things, that the facility is subject to the rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a boiling-water reactor located in Claiborne County, Mississippi.

#### 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 in the **Federal Register** 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 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 two of these additional requirements that Entergy now seeks an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have already been or will be implemented by the licensee by March 31, 2010.

By application dated January 14, 2010, as supplemented by letters dated January 18 and February 4, 2010, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's letters dated January 14 and February 4, 2010, contain security-related information and, accordingly, are being withheld from public disclosure. The licensee's letter dated January 18, 2010, is publicly available in Agencywide Documents Access and Management System (ADAMS) Accession No. ML100190852. The licensee has requested an exemption from the March 31, 2010, implementation date, stating that it must complete a number of modifications to the current site security configuration before all requirements can be met. Specifically, the request is to extend the implementation date from the current March 31, 2010, deadline to July 30, 2010, for one requirement and to March 31, 2011, for a second requirement. Granting this exemption for the two requirements would allow the licensee to complete the modifications designed to provide significant upgrades to meet the noted regulatory requirements.

#### 3.0 Discussion of Part 73 Schedule Exemptions From the March 31, 2010, 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