

both onsite and offsite emergency response personnel. This includes annual training, requalification, and participation drills for onsite emergency responders. It appears that these measures will maintain an adequate level of emergency preparedness during this period.

Licensee representatives meet routinely with State and local emergency management and have discussed rescheduling of the biennial exercise with these groups. K. Hayden, Captain, Acting Commanding Officer of the New Jersey State Police Emergency Management Section, has submitted a similar exemption request to FEMA RII.

The national emergency of September 11, 2001, rendered the conduct of a nuclear power plant exercise in the previously scheduled time frame inappropriate. Application of the applicable regulation would not serve the underlying purpose of the rule, in that diversion of public agency attention from recovery from the national emergency and management of the mail based terrorist events in New Jersey would not contribute to public health and safety. Postponement of exercise conduct is a benefit to public health and safety that compensates for any decrease in safety that may result. Additionally, the licensees drill program includes offsite agency participation and is a compensating measure contributing to justification of the exemption. The exemption only provides temporary relief from the applicable regulation, in that AmerGen has committed to conduct the exercise during the next calendar year (2002). AmerGen made a good faith effort to conduct the exercise and comply with regulations. The circumstances dictating the request for exemption are beyond the licensee's control. The regulations of this part do allow for the postponement of exercises and the regulations have been invoked for appropriate circumstances. This being the case, the occasional need to postpone exercises was considered as a potential circumstance. The NRC staff has determined that conduct of the full-participation exercise as early as practical in 2002 is prudent even though the licensee is expected to conduct another full-participation exercise in 2003. Accordingly, the licensee made a good faith effort to comply with the schedule requirements of Appendix E for full-participation exercises. The staff finds the request acceptable.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR part 50, Appendix E, this 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. Further, the Commission has determined, pursuant to 10 CFR 50.12(a), that special circumstances of 10 CFR 50.12(a)(v) are applicable in that the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. Therefore, the Commission hereby grants AmerGen a one-time schedular exemption from the requirements to conduct an exercise of its onsite and offsite (with full-participation by each offsite authority having a role under the plan) emergency plans every 2 years as required by sections IV.F.2.b and c of Appendix E to 10 CFR part 50. This conclusion is based on AmerGen's commitment to conduct the postponed exercise in 2002. The staff recommends that AmerGen schedule the exercise as early as practical in 2002, but the exemption is not predicated on AmerGen following this recommendation.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (66 FR 65520).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 21st day of December 2001.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

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

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-317 and 50-318]

Calvert Cliffs Nuclear Power Plant, Inc. (Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2); Exemption

I

Calvert Cliffs Nuclear Power Plant, Inc. (CCNPPI or the licensee) is the holder of Facility Operating License Nos. DPR-53 and DPR-69, which authorizes operation of the Calvert Cliffs Nuclear Power Plant (CCNPP), Unit Nos. 1 and 2 at power levels not to exceed 2700 megawatts thermal. The facility consists of two pressurized-water reactors located at the licensee's site in Calvert County, Maryland. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Nuclear

Regulatory Commission (NRC, the Commission) now or hereafter in effect.

II

Title 10 of the Code of Federal Regulations (10 CFR), part 50, Appendix E, section IV.F.2.b requires each licensee at each site to conduct an exercise of its onsite emergency plan every 2 years and indicates the exercise may be included in the full participation biennial exercise required by paragraph 2.c of the same section. In addition, licensees are to take actions necessary to ensure that adequate emergency response capabilities are maintained during the interval between biennial exercises by conducting drills. Paragraph 2.c requires offsite plans for each site to be exercised biennially with full participation by each offsite authority having a role under the plan. Normally during such biennial full participation exercises, the NRC evaluates onsite, and the Federal Emergency Management Agency (FEMA) evaluates offsite, emergency preparedness activities.

By letter dated September 28, 2001, the licensee requested an exemption from section IV.F.2.c of Appendix E regarding the conduct of a full-participation exercise originally scheduled for September 25, 2001. Specifically, the licensee proposed rescheduling the exercise originally scheduled for September 25, 2001, to sometime prior to December 31, 2002. However, the next full-participation exercise will continue to be scheduled biennially from 2001.

CCNPPI is among several licensees requesting schedular exemptions for emergency exercises in the wake of the national emergency of September 11, 2001. It is recognized that it was not appropriate to conduct an exercise during the period of disruption and heightened security after the national emergency. Considering the extraordinary circumstances, a schedular exemption is appropriate. However, in this period of heightened security concerns regarding nuclear plant vulnerability, it is prudent to conduct the full-participation exercise as soon as practical to demonstrate and maintain readiness.

The licensee is faced with a difficult task to coordinate and schedule an exercise that involves multiple governmental agencies at the Federal, State, and local level. Many local response organizations depend on volunteers. In order to accommodate this difficult task, the NRC has allowed licensees to schedule full participation exercises at any time during the calendar biennium. This gives the

licensee the flexibility to schedule the exercise within a 12- to 36-month window and still meet the biennial requirement specified in the regulations.

It should be noted that the licensee requested relief from 10 CFR part 50, Appendix E, section IV.F.2.c. While the intent of the request is clear, the NRC staff determined that a scheduler exemption from the onsite exercise requirements of 10 CFR part 50, Appendix E, section IV.F.2.b, was also necessary. The following evaluation addresses the technical issues necessary to grant a scheduler exemption from requirements in 10 CFR part 50, Appendix E, sections IV.F.2.b and c, to conduct an evaluated biennial exercise.

Pursuant to 10 CFR 50.12, the NRC may grant exemptions from the requirements of its regulations which, pursuant to 10 CFR 50.12(a), are (1) authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security and (2) present special circumstances. 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 has made good faith efforts to comply with the regulation.

III

The licensee was scheduled to conduct a biennial full participation exercise on September 25, 2001. The requested exemption is to postpone that exercise and conduct it during 2002. The interval between biennial exercises could be as long as 38 months, if the exercise were conducted in December of 2002. However, given the circumstances and the fact that other 2001 exercises in NRC Region I will be rescheduled for 2002, this time frame is acceptable. To reschedule this exercise, the licensee will have to coordinate with local and State supporting agencies as well as NRC Region I and FEMA Region III. This effort will be complicated by the fact that NRC and FEMA will have to support the normally scheduled exercises in addition to the rescheduled exercises during 2002. The increased flexibility requested by the licensee may be necessary for scheduling of Federal resources more so than local or utility resources.

CCNPPI successfully conducted a full-participation exercise in October 1999, which was evaluated by the NRC (NRC Inspection Report Nos. 50-317/99-10 and 50-318/99-10) and FEMA (Final Exercise Report CCNPP, March 14, 2000.) The results of this exercise determined that the overall performance

of the emergency response organization demonstrated that onsite emergency plans are adequate and that the organization is capable of implementing these plans.

The licensee provided a description of recently completed drills and training evolutions, as well as the planned training and drill schedule for the next year. CCNPPI had previously conducted one full-participation emergency preparedness exercise on August 23, 2001. Additionally, a site-wide non-state participation drill was conducted on May 24, 2001. Although these drills were not evaluated by NRC and FEMA, the May and August 2001 drill results were critiqued by the emergency response organization and the Nuclear Plant Assessment Department. Issues identified during the drill critiques are being resolved under the corrective action program.

CCNPPI stated that emergency preparedness has been maintained in accordance with the Emergency Response Plan. The requirements for semi-annual health physics drills were met by the conduct of the May 24 and August 23, 2001, drills. The requirement for a post-accident sampling drill was met on June 7, 2001. The annual requirement for an environmental sampling drill was met on September 4, 2001. Dose assessment office drills were conducted on January 17, 2001, and May 29, 2001. The annual requirement for a severe accident management drill was met in the May 24 and August 23 drills.

The State of Maryland and local governments have maintained radiological emergency preparedness by fully participating in the August 23, 2001 drill. Additionally, the State agencies participated in the federally-evaluated Peach Bottom Atomic Power Station exercise on August 15, 2000. Calvert County Public Safety, Calvert Memorial Hospital, and local rescue squads participated in a simulated contaminated injury drill at CCNPP on November 16, 2000. Dorchester County successfully demonstrated corrective action for a deficiency noted in the CALVEX 99 FEMA exercise report.

CCNPPI has stated that between September 2001 and December 2002, measures will be taken to maintain emergency preparedness at CCNPP. The existing training and drill schedule currently in place for emergency response activities will remain in place and be adjusted as necessary to ensure the readiness of both onsite and offsite emergency response personnel. For onsite emergency responders, this includes annual training and participation in drills. CCNPPI will

conduct quarterly combined functional and/or activation drills and a self-evaluated annual exercise. These drills and the self-evaluated annual exercise satisfy the drill requirements of 10 CFR part 50, Appendix E, IV.F.2.b. Offsite agencies in Maryland are routinely invited to, and actively participate in, these drills and exercises as a training activity for offsite response personnel. Local response groups conduct annual training and participate in emergency operations center drills. The biennial medical support (MS-1) drill conducted in conjunction with Calvert Memorial Hospital and Calvert County took place in October 2001.

These activities satisfy the drill and exercise requirements of 10 CFR part 50, Appendix E, IV.F.2.b. CCNPPI stated that it meets routinely with State and local emergency management and support groups, has discussed rescheduling of the biennial exercise with these groups, and that these groups support the exercise postponement.

For this exemption request, the special circumstances described in section 50.12(a)(2)(v) of 10 CFR part 50 are present. The exemption only provides temporary relief from the applicable regulation, in that the licensee has committed to conduct the exercise during the next calendar year (2002) and has not requested any permanent changes in future exercise scheduling. The licensee made a good faith effort to conduct the exercise and comply with regulations. The circumstances dictating the request for exemption are beyond the licensee's control. The regulations of this part allow for the postponement of exercises and the regulations have been invoked for appropriate circumstances.

Based upon the consideration of the public health and safety, schedule, and resource issues resulting from the national emergency of September 11, 2001, the staff concludes that the request for exemption is acceptable. The staff has determined that conduct of the full-participation exercise as early as practical in 2002 is prudent even though the licensee is expected to conduct another full-participation exercise in 2003.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), 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, and is otherwise in the public interest. Further, the Commission has determined, pursuant to 10 CFR 50.12(a)(v), that special circumstances

are present, in that the exemption would only provide temporary relief from the applicable regulations, and the licensee has made a good faith effort to comply with the regulation. Therefore, the Commission hereby grants CCNPPI a one-time schedular exemption from the requirements to conduct an exercise of its onsite and offsite emergency plans every 2 years as required by 10 CFR part 50, Appendix E, section IV.F.2.b and c. This conclusion is based on the licensee's commitment to conduct the postponed exercise in 2002.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (66 FR 64063).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 21st day of December 2001.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

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

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50-269, Docket No. 50-270, Docket No. 50-287, Docket No. 72-040, Docket No. 72-004, Renewed License No. DPR-38, Renewed License No. DPR-47, Renewed License No. DPR-55, and License No. SNM-2503]

Duke Energy Corporation (Oconee Nuclear Station, Units 1, 2 and 3 and Oconee Independent Spent Fuel Storage Installation); Order Approving Transfer of Operating Authority and Conforming Amendments

Duke Energy Corporation (Duke Energy, or DEC) is the holder of Renewed Facility Operating Licenses Nos. DPR-38, DPR-47, and DPR-55, which authorize operation of the Oconee Nuclear Station, Units 1, 2 and 3 and Materials License No. SNM-2503, which authorizes operation of the Oconee Independent Spent Fuel Storage Installation (ISFSI). The Oconee Nuclear Station (Oconee or the Facility) and ISFSI are located in Oconee County, South Carolina.

By application dated July 10, 2001, as supplemented by letters dated October 31, November 1 and 26, and December 10, 2001, (collectively referred to herein as "the application" unless otherwise indicated) the Commission was informed that DEC, the licensed operator of the Oconee units and the

ISFSI, proposes to enter into an Operation and Maintenance Services Agreement with Duke Energy Nuclear, LLC (Duke Nuclear), and transfer operating authority under the licenses to Duke Nuclear. Under the proposed transaction, Duke Nuclear, which will be a wholly owned indirect subsidiary of DEC, will become a new licensee exclusively authorized to operate Oconee and the ISFSI in accordance with the terms and conditions of the licenses. The transaction involves no change in full ownership of the Facility and the ISFSI by DEC. DEC requested approval of the proposed transfer of operating authority under the Oconee facility renewed operating licenses to Duke Nuclear pursuant to 10 CFR 50.80 and requested approval of conforming amendments pursuant to 10 CFR 50.90 to reflect the transfer. DEC requested approval of the proposed transfer of operating authority under the Oconee ISFSI License SNM-2503 to Duke Nuclear pursuant to 10 CFR 72.50 and requested approval of conforming amendments pursuant to 10 CFR 72.56 to reflect the transfer. The proposed amendments would add Duke Nuclear to the licenses and reflect that Duke Nuclear is exclusively authorized to operate Oconee and the ISFSI. Duke Nuclear will also become a general licensee for storage of spent fuel in certified dry casks at Oconee pursuant to 10 CFR 72.210.

Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on September 25, 2001 (66 FR 49049). No hearing requests or written comments were received.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. In addition, pursuant to 10 CFR 72.50, no license shall be transferred through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information in the application, and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that Duke Nuclear is qualified to hold the operating authority under the licenses, and that the transfer of the operating authority under the licenses to Duke Nuclear is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the

application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter 1; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied. The foregoing findings are supported by a safety evaluation dated December 20, 2001.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234, and 10 CFR 50.80 and 10 CFR 72.50, it is hereby ordered that the transfer of operating authority under the licenses, as described herein, to Duke Nuclear is approved, subject to the following conditions:

(1) Duke Nuclear shall, prior to completion of the transfer of operating authority for Oconee, provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that Duke Nuclear has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(2) After receipt of all required regulatory approvals of the transfer of operating authority to Duke Nuclear, DEC and Duke Nuclear shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt within 5 business days and of the date of the closing of the transfer no later than 2 business days prior to the date of closing. If the transfer is not completed by December 31, 2002, this Order shall become null and void, provided however, upon written application and for good cause shown, such date may in writing be extended.

It is further ordered that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the licenses to reflect the subject