

indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the licenses to reflect the subject transfer of operating authority are approved. The amendments shall be issued and made effective at the time the proposed transfer is completed.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated July 10, 2001, the supplemental letters dated October 31, November 1 and 26, and December 10, 2001, and the Safety Evaluation dated December 20, 2001, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>.

Dated at Rockville, Maryland, this 20th day of December, 2001.

For the Nuclear Regulatory Commission.

Brian W. Sheron,

Acting Director, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50-369, Docket No. 50-370, License No. NPF-9, and License No. NPF-17]

Duke Energy Corporation (McGuire Nuclear Station, Units 1 and 2); Order Approving Transfer of Operating Authority and Conforming Amendments

Duke Energy Corporation (Duke Energy, or DEC), is the holder of Facility Operating Licenses Nos. NPF-9 and NPF-17, which authorize operation of the McGuire Nuclear Station, Units 1 and 2 (McGuire or the facility). The McGuire Nuclear Station is located in Mecklenburg County, North 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, owner of the facility, 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 McGuire in accordance with the terms and conditions of the licenses. The transaction involves no change in facility ownership. Duke Nuclear will not own any portion of the facility.

DEC requested approval of the proposed transfer of operating authority under the McGuire licenses to Duke Nuclear pursuant to 10 CFR 50.80. The application also requested approval of conforming amendments pursuant to 10 CFR 50.90 to reflect the transfer. The proposed amendments would add Duke Nuclear to the licenses and reflect that Duke Nuclear is exclusively authorized to operate McGuire. Duke Nuclear will also become a general licensee for storage of spent fuel in certified dry casks at McGuire 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 49048). 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. 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 conducted 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, 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 McGuire, 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 transfer of operating authority are approved. The amendments shall be issued and made effective at the time the proposed transfer is completed.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated July 10, 2001, the supplemental letters dated October 31, November 1 and 26, and December 10, 2001, and the Safety Evaluation dated December 20, 2001, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public

Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>.

Dated at Rockville, Maryland, this 20th day of December 2001.

For the Nuclear Regulatory Commission.

Brian W. Sheron,

Acting Director, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-352 and 50-353]

Exelon Generation Company, LLC, Limerick Generating Station, Units 1 and 2; Exemption

1.0 Background

Exelon Generation Company, LLC (Exelon or the licensee), is the holder of Facility Operating Licenses Nos. NPF-39 and NPF-85, which authorize operation of the Limerick Generating Station (LGS), Units 1 and 2. The licenses provide, 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 two boiling-water reactors located at the licensee's site in Montgomery County, Pennsylvania.

2.0 Request/Action

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 two 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 October 16, 2001, Exelon requested an exemption from the requirements of 10 CFR part 50, Appendix E, Sections IV.F.2.c, regarding

the conduct of a full-participation exercise at LGS. The exemption would allow the licensee to postpone the biennial full-participation exercise up to the end of 2002. However, the next full-participation exercise will continue to be scheduled biennially from 2001.

Exelon is among several licensees requesting exercise exemptions 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. The State of Pennsylvania was initially involved with the recovery response to the national emergency and continues to respond to heightened security needs. Considering the extraordinary circumstances, a schedular exemption is acceptable. 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 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 schedular 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 schedular exemption from the requirements of 10 CFR part 50, appendix E, sections IV.F.2.b and c, to conduct an evaluated biennial exercise.

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 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. 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.

The licensee was scheduled to conduct a biennial full-participation exercise on November 1, 2001. The requested exemption is to postpone that exercise and conduct it during 2002. The interval between biennial exercises could be as long as 39 months, if the exercise were conducted in December of 2002. However, the licensee stated that the rescheduled exercise is expected to take place in the first or second quarter of 2002. If the licensee does conduct the exercise within the second quarter of 2002, the period between exercises would be about 33 months and within the normal parameters of exercise conduct, in which a period of 36 months is acceptable as long as the sequential exercises are conducted within the calendar biennium. However, given that other 2001 exercises in NRC Region I will be rescheduled into 2002, the licensee may have difficulty finalizing the schedule by the end of the second quarter. 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. Increased flexibility may be necessary for scheduling of Federal resources more so than local or utility resources. This being the case, a schedular exemption for conduct of the exercise within calendar year 2002 is appropriate, with the understanding that the licensee will conduct the exercise as soon as practicable.

LGS successfully conducted a full-participation exercise on September 14, 1999, which was evaluated by the NRC (Inspection Report No. 50-352;353/99-06) and FEMA (Final Exercise Report LGS 03/01/00.) 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. No violations of NRC requirements or exercise weaknesses were identified and the licensee stated that performance issues identified in the critique were entered into the corrective action process and addressed.

The licensee stated that subsequent to the September 14, 1999, full-