

Thermo-Lag 330–1 fire barrier material or had not provided the required separation distance between redundant safe shutdown trains, in order to satisfy the requirements in paragraph III.G.2 of Appendix R to 10 CFR Part 50.

In the present situation, the licensee states that the Safety Relief Valve electrical trains or cables, which control the emergency depressurization system, do not meet the required minimum separation distances prescribed in Appendix R. (The issue of fire insulation material does not come in to play here since the facility does not use significant amounts of such insulation around electric cables or trains.)

#### The Proposed Operator Manual Action

According to the February 2009 filing, the licensee relies upon an Operator Manual Action that is not allowed per 10 CFR Part 50, Appendix R, Section III.G.2. Further, the NRC has stated that manual actions are not specifically authorized by Appendix R, Section III.G.2.

If a fire were to occur, the manual action proposed by the licensee requires an operator to leave the control room, travel to a local control panel located in the reactor building, and then operate up to eleven (11) valves that are essential for the depressurization system and the emergency core cooling system. Based on the submissions, it appears that it could take up to fifteen minutes for an operator to reach the local control panel in the reactor building.

While it may be appropriate to regularize and formalize the proposal to have an employee manually operate the safety related valves, the February 2009 application seeks to do so in a way that avoids the opportunity for the public to request a proceeding or comment on potential environmental impacts. Also, the application does not appear to discuss the impact of the proposed change on the defense and security of the facility and host community, the feasibility of the proposed change during a significant fire event, or the cumulative effect of the proposed change given the several previous changes to the fire protection program at the facility. It would seem appropriate to address these issues via a public forum under the AEA, APA, and NEPA before reaching any final decision.

The NRC staff has reviewed the comments provided by the State of New York, dated June 12, 2009, on the fire safety regulation and the proposed OMA and has concluded that the consideration or granting of the requested exemption does not violate the fire safety regulation or diminish the level of safety that is present at JAFNPP. Additionally, upon review of the request, NRC staff has concluded that the licensee is not solely reliant upon the requested OMA for compliance with the regulation and that the overall defense-in-depth concept employed in the specific fire area is consistent with the underlying purpose of the fire safety regulation.

Regarding the comment concerning “Public Notice and Opportunity to Request a Hearing,” the regulations under 10 CFR 50.12, “Specific exemptions” do not include comment period and opportunity for a hearing. The public can pursue other avenues, such as petition for changes to the regulatory framework to allow hearings via the rulemaking process (10 CFR 2.802), or a petition for enforcement action (10 CFR 2.206) where stakeholders assert that license holders are not meeting regulatory requirements.

#### 4.0 Conclusion

Based on all of the features of the defense-in-depth concept discussed above, the NRC staff concludes that the use of the requested OMA, in this particular instance and in conjunction with the other installed fire protection features, in lieu of strict compliance with the requirements of III.G.2 is consistent with the underlying purpose of the rule. As such, the level of safety present at JAFNPP is commensurate with the established safety standards for nuclear power plants.

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, is consistent with the common defense and security and that special circumstances are present to warrant issuance of the exemption. Therefore, the Commission hereby grants Entergy an exemption from the requirements of Section III.G.2 of Appendix R of 10 CFR Part 50, to JAFNPP for the OMA discussed above.

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 (75 FR11575).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 11th 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 Nos. 50–259, 50–260 and 50–296; NRC–2010–0030]

### Tennessee Valley Authority; Browns Ferry Nuclear Plant, Units 1, 2, and 3; Exemption

#### 1.0 Background

Tennessee Valley Authority (TVA, the licensee) is the holder of Facility Operating License Numbers DPR–33, DPR–52 and DPR–68, which authorize operation of the Browns Ferry Nuclear Plant, Units 1, 2, and 3 (BFN). 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 three boiling-water reactors located in Limestone County, Alabama.

#### 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 three of these new requirements that BFN 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 6, 2009, the licensee requested an exemption in accordance with 10 CFR 73.5, “Specific exemptions.” Portions of the licensee’s November 6, 2009, letter contain safeguards and security sensitive

information and, accordingly, are not available to the public. On January 11, 2010, the licensee submitted a redacted version of its November 6, 2009, letter, which is publicly available (Agencywide Documents Access and Management System Accession No. ML100130168). 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 for three specific 10 CFR 73.55 requirements that would be in place by December 20, 2012, versus the March 31, 2010, deadline. Being granted this exemption for the three items would allow the licensee additional time to complete the modifications designed to update aging equipment and incorporate state-of-the-art technology to meet or exceed 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 this exemption, as noted above, would allow an extension from March 31, 2010, until December 20, 2012. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR Part 73. 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, NRC approval of the licensee's exemption request is authorized by law.

In the draft final 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 (74 FR 13926, March 27, 2009). 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 power reactor security 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 these changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected generic industry requests 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.

#### *Browns Ferry Schedule Exemption Request*

The licensee provided detailed information in its November 6, 2009, letter, as supplemented by letter dated January 11, 2010, requesting an exemption. The NRC staff finds that the licensee has provided an adequate basis for the exemption request as well as appropriate detailed justification that describes the reasons additional time is needed. Specifically, the BFN will be undertaking multiple large scope modifications to the physical protection program through four interrelated projects that require supporting multiple subtasks. These subtasks must be completed in sequence due to the complex interconnectivity of each project to other program components. The licensee has provided sufficiently detailed technical information that supports the described solution for meeting the identified requirements. Because of the large scope of the proposed modifications and upgrades, significant engineering analysis, design, and planning are required to ensure system effectiveness upon completion of the four projects. In addition to project-specific tasks and procurement details, the TVA has also identified a variety of site-specific considerations that will impact the final completion date, such as refueling outages, manpower resources, engineering/design changes during construction, and weather conditions that may impact completion

of milestones. As with all construction activities, the licensee must also account for site-specific safety and construction methods in the areas in which work is to be performed, the location of existing infrastructure such as buried power lines, and unanticipated delays that could significantly impact the project schedules. These site-specific safety and construction methods must be accounted for in the proposed schedule that, in turn, impacts the final compliance date requested. The TVA has contracted a common provider to perform design work at two other TVA sites concurrent with the work required at the BFN. The licensee has provided a coordinated/combined schedule for projects at BFN that outlines the sequence in which work must be conducted to ensure effective system connectivity. In addition, the required tasks/changes must be completed in sequence at each of the three sites to support all program upgrades being performed and to ensure effective connectivity of each project.

The upgrades that the licensee identified within its exemption request for BFN support its solution for meeting the three specified requirements, and the proposed schedule is justified by the complexity and scope of the projects described to include tasks and subtasks, timing issues, and potential delays.

The proposed implementation schedule depicts the critical activity milestones of the security system upgrades; is consistent with the licensee's solution for meeting the requirements; is consistent with the scope of the modifications and the issues and challenges identified; and is consistent with the licensee's requested compliance date.

Notwithstanding the schedule exemptions for these limited requirements, the licensee would 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 December 20, 2012, BFN would be in full compliance with all the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

#### 4.0 Conclusion for Part 73 Schedule Exemption Request

The 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 December 20, 2012, with regard to three specified requirements of 10 CFR 73.55.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, the 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 security system upgrades are complete justify exceeding the full compliance date and the proposed implementation schedule is consistent with the scope of the modifications in the case of this particular licensee. The security measures that TVA needs additional time to implement at BFN are new requirements imposed by March 27, 2009, amendments to 10 CFR 73.55, and are in addition to those required by the security orders issued in response to the 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 from the March 31, 2010, implementation deadline for the three items specified in Enclosure 1 of the TVA letter dated November 6, 2009 (publicly available version dated January 11, 2010), the licensee is required to be in full compliance by December 20, 2012. 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 5354, dated February 2, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 11th 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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## SMALL BUSINESS ADMINISTRATION

[Docket No. SBA-2010-0005]

### Implications of Financial Accounting System (FAS) 166 on SBA Guaranteed Loan Programs

**AGENCY:** Small Business Administration.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Small Business Administration (SBA) is soliciting information and views from the public on: (1) The effect that the accounting changes mandated by the Financial Accounting Standards Board (FASB) in Financial Accounting Standard (FAS) 166 have on SBA Lender and investor participation in the SBA 7(a) loan program and the SBA Secondary Market Program; and (2) the need to modify the structure of the 7(a) loan program and/or the SBA Secondary Market program as well as related guidelines and governing documents as a result of FAS 166.

**DATES:** Comments must be received on or before April 19, 2010.

**ADDRESSES:** You may submit comments, identified by docket number SBA-2010-0005 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail, Hand Delivery/Courier:* James W. Hammersley, Acting Assistant Administrator for Policy and Strategic Planning, Office of the Administrator, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

SBA will post all comments on <http://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <http://www.regulations.gov>, please submit the information to James W. Hammersley, Acting Assistant Administrator for Policy and Strategic Planning, Office of the Administrator, Small Business Administration, 409 Third Street, SW., Washington, DC 20416 or send an e-mail to [james.hammersley@sba.gov](mailto:james.hammersley@sba.gov). Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination as to whether the information will be published.

#### FOR FURTHER INFORMATION CONTACT:

James W. Hammersley, Acting Assistant Administrator for Policy and Strategic Planning, Office of the Administrator, (202) 205-7505; [james.hammersley@sba.gov](mailto:james.hammersley@sba.gov).

**SUPPLEMENTARY INFORMATION:** Under SBA's 7(a) business loan program, private sector lenders (SBA Lenders) make loans to small businesses (7(a) loans) that do not qualify for conventional credit. The SBA guaranty provides the credit enhancement necessary for the SBA Lender to make the 7(a) loan. Through the SBA Secondary Market described in 13 CFR 120.601, SBA Lenders sell the guaranteed portion of 7(a) loans (guaranteed portions) to investors and use the funds to make additional loans. The Secondary Market is a major source of liquidity for many SBA Lenders. SBA estimates that SBA Lenders sell the guaranteed portion of almost 50% of the 7(a) loans they make.

The Secondary Market for 7(a) loans developed in the early 1970s when SBA Lenders began to sell guaranteed portions to other lenders. SBA realized the importance of a stable and reliable liquidity option and took steps to formalize and expand the market for the sale of guaranteed portions, including providing a full faith and credit guaranty for the investors in the mid 1970s. Throughout the 1970s and early 1980s the market continued to grow as more lenders used the funds from Secondary Market sales to make additional loans. In 1984, in recognition of the value of the Secondary Market, Congress added a pooling option that included a timely payment guaranty by SBA. The pooling option allowed small business loans to be purchased by an even greater number of investors. The Secondary Market was clearly one of the drivers in the growth of the 7(a) loan program from \$2 billion per year of loan originations in the early 1980s to almost \$15 billion of loan originations per year prior to the recent economic crisis.

Historically, there has been strong demand for Secondary Market certificates backed by the guaranteed portion of 7(a) loans. Due to this strong demand, SBA Lenders are able to sell the guaranteed portion at a premium and/or retain an income stream in excess of the servicing fee that must be retained. Many lenders prefer to retain a significant ongoing cash flow rather than to receive a premium at the time of sale. This ongoing cash flow provides a steady flow of income that is not based on current loan production.

On May 17, 1994, SBA modified the agreement signed by the lender, investor, and SBA at the time of sale (SBA Form 1086, Secondary Participation Guaranty Agreement—referred to below as the Form 1086 available at <http://www.sba.gov/tools/forms/index.html>) to include a requirement that the selling lender