

Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of

the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.<sup>3</sup>

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective

orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

*It is so ordered.*

Dated at Rockville, Maryland, this 2nd day of March 2010.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**  
*Secretary of the Commission.*

**ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING**

Day	Event/Activity
0 .....	Publication of <b>Federal Register</b> notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10 .....	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60 .....	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20 .....	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25 .....	If NRC staff finds no "need" or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30 .....	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40 .....	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A .....	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3 .....	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28 .....	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53 .....	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60 .....	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60 .....	Decision on contention admission.

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**NUCLEAR REGULATORY COMMISSION**

[Docket No. 50-298; NRC-2010-0061]

**Nebraska Public Power District, Cooper Nuclear Station; Exemption**

**1.0 Background**

Nebraska Public Power District (NPPD or the licensee) is the holder of Facility

Operating License No. DPR-46 which authorizes operation of the Cooper Nuclear Station (CNS). 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.

<sup>3</sup>Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC

staff determinations (because they must be served on a presiding officer or the Commission, as

applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

The facility consists of a boiling-water reactor located in Nemaha County, Nebraska.

## 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, 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 additional requirements that CNS 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 December 22, 2009, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's letter contains security-related information and, accordingly, those portions are not available to the public. 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 for three requirements that would be met by August 31, 2010, instead of the March 31, 2010, deadline. Granting this exemption for the three items 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 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 August 31, 2010, of the implementation date for three specific requirements of the new rule. 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, the exemption 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. 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 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, as documented in the letter from R.W.

Borchardt (NRC) to M.S. Fertel (Nuclear Energy Institute) dated June 4, 2009. 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.

### *CNS Schedule Exemption Request*

The licensee provided detailed information in the Attachment to its letter dated December 22, 2009, requesting an exemption. The licensee is requesting additional time to implement certain new requirements due to the amount of engineering and design, material procurement, construction and installation activities, inclement weather, and a fall 2009 refueling outage. The licensee describes a comprehensive plan to expand the protected area with upgrades to the security capabilities of its CNS site and provides a timeline for achieving full compliance with the new regulation. The Attachment to the licensee's letter contains security-related 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, justification for the exemption request, a description of the required changes to the site's security configuration, and a timeline with critical path activities that would bring the licensee into full compliance by August 31, 2010. The timeline provides dates indicating when (1) construction will begin on various phases of the project (e.g., new buildings and fences), and (2) critical equipment will be ordered, installed, tested and become operational. A redacted version of the licensee's exemption request, including attachment, is publicly available at Agencywide Documents Management and Access System (ADAMS) Accession No. ML093580132.

Notwithstanding the scheduler exemptions for these limited requirements, the licensee 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 August 31, 2010, CNS 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 staff has reviewed the licensee's submittal and concludes that the licensee has justified its request for an extension of the compliance date with regard to three specified requirements of 10 CFR 73.55 until August 31, 2010.

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 long-term benefits that will be realized when the CNS modifications are complete justifies extending the full compliance date in the case of this particular licensee. The security measures that CNS needs additional time to complete, 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 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 three items specified in the Attachment to NPPD's letter dated December 22, 2009, the licensee is required to be in full compliance with 10 CFR 73.55 by August 31, 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 8153; February 23, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 26th day of February 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. 50-134; NRC-2010-0053]

### Notice of License Amendment Request by the Worcester Polytechnic Institute for Approval of the Decommissioning Plan for the Leslie C. Wilbur Nuclear Reactor Facility in Worcester, MA and Opportunity To Request a Hearing

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of license amendment request and opportunity to request a hearing.

**DATES:** A request for a hearing must be filed by May 7, 2010.

**FOR FURTHER INFORMATION CONTACT:** Ted Carter, Project Manager, Materials Decommissioning Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission (NRC), Two White Flint North, Mail Stop T8 F5, 11545 Rockville Pike, Rockville, Maryland 20852-2738 *Telephone:* (301) 415-5543; *fax number:* (301) 415-5369; *e-mail:* ted.carter@nrc.gov.

#### SUPPLEMENTARY INFORMATION:

#### I. Introduction

In an application dated September 30, 2009, Worcester Polytechnic Institute (WPI or the licensee) submitted a Decommissioning Plan (DP) to the NRC for approval for its Leslie C. Wilbur Nuclear Reactor Facility (LCWNRF) on the campus of WPI in Worcester, Massachusetts. The DP and supporting documents for the LCWNRF are located in ADAMS at ML092880231. WPI is working closely with the Department of Energy, the Idaho National Laboratory and NAC International, Inc. to facilitate and schedule the removal of reactor fuel from the facility before WPI's overall dismantling and decommissioning begins. WPI submitted its combined Quality Procedure and Quality Assurance (QA) document (ML092160598) in relation to WPI's nuclear fuel removal process on July 21, 2009. NRC reviewed and approved WPI's QA program for fuel removal on August 19, 2009 (ML092310471).

On September 21, 2009, WPI submitted its nuclear materials Transportation Plan (TP) in support of the removal of fuel. This document contains safeguards information and is not available to the public (*see* Section V, Further Information, for instructions for requesting access to this document).

The TP which specifically addresses compliance with the requirements of 10

CFR Part 73 ("Physical Protection of Plants and Material"), is under review. The TP will govern the one-time shipment offsite of WPI's nuclear reactor fuel. WPI plans to ship the fuel to another research and test reactor licensed by the NRC.

If the NRC approves WPI's DP, the approval will be documented in an amendment to NRC License No. R-61. Before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the AEA), and the National Environmental Policy Act. These findings will be documented, respectively, in a Safety Evaluation Report (SER), and in a separate environmental analysis performed by the NRC.

#### II. Opportunity To Request a Hearing

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, "Hearing requests, Petitions to Intervene, Requirements for Standing, and Contentions." Interested persons should consult 10 CFR Part 2, section 2.309, which is available at the NRC's Public Document Room (PDR), located at O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at (800) 397-4209 or (301) 415-4737). NRC regulations are also accessible electronically from the NRC's Electronic Reading Room on the NRC Web site at <http://www.nrc.gov>.

#### III. Petitions for Leave To Intervene

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 petition for leave to intervene. As required by 10 CFR 2.309, 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 must provide the name, address, and telephone number of the petitioner and 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 AEA to be made a 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 that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide