

**NUCLEAR REGULATORY COMMISSION**

**[Docket No. 50-409; NRC-2012-0102]**

**Dairyland Power Cooperative, La Crosse Boiling Water Reactor**

**Exemption From Certain Security Requirements**

**1.0 BACKGROUND**

The La Crosse Boiling Water Reactor (LACBWR) is owned and was operated by the Dairyland Power Cooperative (DPC). The LACBWR was a nuclear power plant of nominal 50 Mw electrical output, which utilized a forced-circulation, direct-cycle boiling water reactor as its heat source. The plant is located on the east bank of the Mississippi River in Vernon County, Wisconsin. The plant was one of a series of demonstration plants funded, in part, by the U.S. Atomic Energy Commission (AEC). The nuclear steam supply system and its auxiliaries were funded by the AEC, and the balance of the plant was funded by the DPC. The Allis-Chalmers Company was the original licensee; the AEC later sold the plant to the DPC and provided them with a provisional operating license.

The LACBWR was permanently shut-down on April 30, 1987, and reactor defueling was completed on June 11, 1987. The decommissioning plan was approved August 7, 1991. The decommissioning plan is considered in the post-shutdown decommissioning activities report (PSDAR). The DPC has been conducting dismantlement and decommissioning activities. The DPC is developing an onsite independent spent fuel storage installation (ISFSI) and plans to move spent fuel to the ISFSI in April 2012.

## 2.0 REQUEST/ACTION

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73, “Physical Protection of Plants and Materials,” provides in part, “This part prescribes requirements for the establishment and maintenance of a physical protection system which will have capabilities for the protection of special nuclear material at fixed sites and in transit and of plants in which special nuclear material is used.” In Section 73.55, entitled “Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage,” paragraph (b)(1) states, “The licensee shall establish and maintain a physical protection program, to include a security organization, which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety.”

The U.S. Nuclear Regulatory Commission (NRC or the Commission) revised 10 CFR 73.55, in part to include the preceding language, through the issuance of a final rule on March 27, 2009 (74 FR 13926). The revised regulation stated that it was applicable to all Part 50 licensees. The NRC became aware that many Part 50 licensees with facilities in decommissioning status did not recognize the applicability of this regulation to their facilities. Accordingly, the NRC informed licensees with facilities in decommissioning status and other stakeholders that the requirements of 10 CFR 73.55 are applicable to all Part 50 licensees. By letter dated August 2, 2010, the NRC discussed the applicability of the revised rule and stated that licensees need to evaluate the applicability of the regulation to its facility and either make appropriate changes to its Physical Security Plan, or request an exemption.

By letter dated December 1, 2010, the DPC responded to the NRC’s letter and requested exemptions from the following security requirements in 10 CFR Part 73: 10 CFR 73.55(a)(1), 10 CFR 73.55(b)(2), 10 CFR 73.55(b)(3)(i), 10 CFR 73.55 (b)(6), 10 CFR 73.55(b)(7), 10 CFR 73.55(b)(8), 10 CFR 73.55(b)(9)(ii)(A), 10 CFR 73.55(b)(9)(ii)(B), 10 CFR

73.55(b)(9)(ii)(C), 10 CFR 73.55(c)(2), 10 CFR 73.55 (c)(4), 10 CFR 73.55(c)(6), 10 CFR 73.55(d)(3)(i), 10 CFR 73.55(e), 10 CFR 73.55(e)(1)(i), 10 CFR 73.55(e)(5), 10 CFR 73.55(e)(10), 10 CFR 73.55(g)(2)(iii), 10 CFR 73.55(g)(7)(ii), 10 CFR 73.55(g)(8)(iii), 10 CFR 73.55(i)(1), 10 CFR 73.55(i)(2), 10 CFR 73.55(i)(4)(i), 10 CFR 73.55(i)(4)(ii), 10 CFR 73.55(i)(5)(ii), 10 CFR 73.55 (k)(1), 10 CFR 73.55 (k)(3), 10 CFR 73.55 (k)(5)(i), 10 CFR 73.55 (k)(5)(ii), 10 CFR 73.55 (k)(5)(iii), 10 CFR 73.55 (k)(6)(i), and 10 CFR 73.55 (k)(8). The DPC stated that its intent for submitting this exemption request was to continue to follow its NRC-approved Physical Security Plan (PSP).

### **3.0 DISCUSSION**

Pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may grant exemptions from the regulations in part 73 as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

The NRC staff reviewed the licensee's request and determined that exemptions should be granted from the following requirements: 1) 10 CFR 73.55(b)(3)(i) requirement that the physical protection program have capabilities to interdict and neutralize threats; the 10 CFR 73.55(b)(3)(i) requirement that the physical protection program has capabilities to assess and detect continues to apply; 2) 10 CFR 73.55(b)(6) requirement to demonstrate and assess effectiveness of the local law enforcement agency (LLEA) who serve as armed responders; the 10 CFR 73.55(b)(6) requirement to establish, maintain, and implement a performance evaluation program in accordance with Appendix B of part 73 to demonstrate and assess the effectiveness of armed responders and armed security officers to implement the licensee's protective strategy continues to apply to licensee personnel; 3) 10 CFR 73.55(a)(1) requirement to implement 10 CFR 73.55 requirements by March 31, 2010; 4) 10 CFR 73.55(i)(5)(ii)

requirement to provide continuous surveillance, observation, and monitoring of the Owner Controlled Area (OCA) as described in the security plans to detect and deter intruders and ensure the integrity of physical barriers or other components and functions of the onsite physical protection program; 5) 10 CFR 73.55(b)(9)(ii)(A), requirement that the insider mitigation program contain elements from the access authorization program described in 10 CFR 73.56; and 6) 10 CFR 73.55(k)(6)(i) requirement that armed officers, designated to strengthen onsite response capabilities, be onsite and available at all times to carry out their assigned response duties.

Based on an evaluation of the licensee's request and consideration of the reduced radiological risk to the public from an ISFSI at a permanently shut-down and defueled reactor where all of the nuclear fuel is located within the spent fuel pool, NRC staff determined granting of these exemption will not inhibit the LACBWR security program from continuing to meet the general performance objectives of 10 CFR 73.55. In addition, the NRC staff determined that (1) there is reasonable assurance that the health and safety of the public will not be endangered by granting said exemptions; (2) such activities will be conducted in compliance with the Commission's regulations and orders; and (3) the approval of these exemptions will not be inimical to the common defense and security or the health and safety of the public. Accordingly, the NRC staff has determined that, pursuant to 10 CFR 73.5, these exemptions are authorized by law and are otherwise in the public interest.

The NRC is denying the remainder of the DPC's exemption requests because (1) the NRC staff determined that the regulations are not applicable to this facility or (2) the DPC stated its intent for submitting the request was to continue to follow its NRC-approved PSP, and the NRC staff determined that the NRC-approved PSP complies with the requirement from which the DPC requested an exemption. Additional information regarding the NRC staff evaluation is

documented in a Safety Evaluation Report that contains Sensitive Unclassified Non-Safeguards Information and is being withheld from public inspection in accordance with 10 CFR 2.390.

#### **4.0 CONCLUSION**

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, an exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest based on permanently shut down and defueled conditions at the LACBWR. Therefore, the Commission hereby grants the Dairyland Power Cooperative an exemption from the following requirements: 10 CFR 73.55(a)(1) requirement to implement the revised rule by March 31, 2010; 10 CFR 73.55(b)(3)(i) requirement to interdict and neutralize threats; 10 CFR 73.55(b)(6) requirement to demonstrate and assess effectiveness of LLEA who serve as armed responders; 10 CFR 73.55(b)(9)(ii)(A); 10 CFR 73.55(i)(5)(ii); and 10 CFR 73.55(k)(6)(i). As per the licensee's request and consistent with the NRC's regulatory authority to grant exemptions, the date for the DPC to implement the 10 CFR 73.55 requirements shall correspond with issuance of this exemption.

Part of this licensing action meets the categorical exclusion provision in 10 CFR 51.22(c)(25)(vi)(F), because it is an exemption from the requirements of the Commission's regulations and (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve safeguard plans. Therefore, this part of the action does not require either an environmental assessment or an environmental impact statement.

Pursuant to 10 CFR 51.21, 51.32, and 51.35, an environmental assessment and finding of no significant impact related to the exemption from the implementation date requirement in 10 CFR 73.55(a)(1) was published in the *Federal Register* on May 8, 2012 (77 FR 27097). Based upon the environmental assessment, the Commission has determined that issuance of this exemption will not have a significant effect on the quality of the human environment.

These exemptions are effective upon issuance.

Dated at Rockville, Maryland, this 19th day of June 2012.

FOR THE NUCLEAR REGULATORY COMMISSION

**/RA/**

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