

November 1, 2021

Docket Nos.: 52-025  
52-026

ND-21-0977  
10 CFR 73.5  
10 CFR 73.55(a)(4)  
10 CFR 73.56(a)(3)

U.S. Nuclear Regulatory Commission  
ATTN: Document Control Desk  
Washington, DC 20555-0001

**Southern Nuclear Operating Company**  
**Vogtle Electric Generating Plant Units 3 and 4**  
**Request for Exemption:**  
**Physical Protection Program and Access Authorization Program Implementation**

Ladies and Gentlemen:

In accordance with the provisions of 10 CFR 73.5, *Specific Exemptions*, Southern Nuclear Operating Company (SNC), as a Combined License (COL) holder under 10 CFR Part 52, hereby requests an exemption from the requirements of 10 CFR 73.55(a)(4) and 10 CFR 73.56(a)(3) as applicable to Vogtle Electric Generating Plant (VEGP) Units 3 and 4 (License Numbers NPF-91 and NPF-92). Title 10 of the Code of Federal Regulations, Section 73.55, paragraph (a)(4) [10 CFR 73.55(a)(4)] requires a holder of a combined license (COL) under the provisions of 10 CFR Part 73 to implement the requirements of Section 73.55 before fuel is allowed onsite (protected area). Similarly, 10 CFR 73.56(a)(3) requires implementation of this section before fuel is allowed onsite (protected area). The proposed schedular exemption from the requirements of 10 CFR 73.55 would allow SNC to implement the requirements of a physical protection program in accordance with §73.55 and implement the associated personnel access authorization program requirements in accordance with §73.56 after the NRC declares the requirements of 10 CFR 52.103(g) are satisfied and prior to each unit's initial fuel load into the reactor.

This exemption is necessary to allow VEGP Units 3 and 4 construction personnel to continue to efficiently perform construction activities, including the passage of personnel, construction vehicles, and equipment through the site area that will be part of the final protected area (PA), between the 10 CFR 52.103(g) finding and the fuel load milestone. Requiring such individuals and equipment to pass through an operational PA several times a day represents a costly and unnecessary burden. The objective of 10 CFR 73.55 is to provide high assurance that activities involving special nuclear material (SNM) are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety. SNC has an NRC-approved Special Nuclear Material Physical Protection Program (SNMPPP), as described in the VEGP 3&4 Physical Security Plan, to protect the new (unirradiated) fuel and intermediate range detectors already on-site. The methods and procedures outlined in the SNMPPP satisfy the performance objectives, systems capabilities, and reporting requirements specified in 10 CFR 73.67 for the physical protection of SNM of moderate and low strategic significance. The approved SNMPPP is to remain in effect until each unit's fuel load, at which time the 10 CFR 73.55 Physical Protection

Program and the 10 CFR 73.56 Access Authorization Program will be implemented for that unit. Per the SNMPPP, unirradiated fuel is stored in the Controlled Access Area (CAA). Access to a CAA is controlled and limited to authorized personnel and escorted visitors in accordance with site procedures. This exemption will expire when the VEGP Units 3 and 4 PAs are declared operational and the 73.55 and 73.56 programs are implemented.

The exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest.

SNC facilitated a pre-submittal meeting on October 28, 2021 with the NRC staff on the proposed exemption request.

The enclosure to this letter provides the background and supporting basis for the requested exemption.

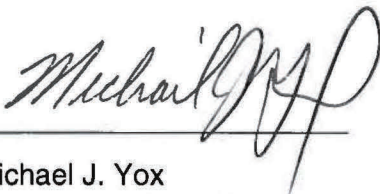
This letter contains no regulatory commitments. This letter has been reviewed and determined not to contain security-related information.

SNC requests NRC staff approval of the schedular exemption by December 1, 2021, to avoid unnecessarily declaring the protected area operational prior to the 10 CFR 52.103(g) finding by the NRC. Delayed approval of this exemption could result in the premature implementation of labor and other resources to make the protected area operational and implement the physical protection program and access authorization program prior to the 10 CFR 52.103(g) finding by the NRC.

Should you have any questions, please contact Mr. Steve Leighty at (706) 848-6790.

I declare under penalty of perjury that the foregoing is true and correct. Executed on the 1<sup>st</sup> day of November 2021.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael J. Yox", written over a horizontal line.

Michael J. Yox  
Regulatory Affairs Director Vogtle 3&4

MJY/SLL/sfr

Enclosure: Vogtle Electric Generating Plant (VEGP) Units 3 and 4 – Exemption Request:  
Physical Protection Program and Access Authorization Program Implementation

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**Southern Nuclear Operating Company**

**ND-21-0977**

**Enclosure**

**Vogtle Electric Generating Plant (VEGP) Units 3 and 4**

**Exemption Request:**

**Physical Protection Program and Access Authorization Program Implementation**

(This Enclosure consists of 10 pages, including this cover page.)

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## 1.0 PURPOSE

In accordance with the provisions of 10 CFR 73.5, Southern Nuclear Operating Company (SNC), as a Combined License (COL) holder under 10 CFR 52, hereby requests an exemption from the requirements of 10 CFR 73.55(a)(4), as interpreted by References 1 and 2, as applicable to Vogtle Electric Generating Plant (VEGP) Units 3 and 4. Specifically, SNC requests a schedular exemption from 10 CFR 73.55(a)(4), which states:

*“ ... holders of a combined license under the provisions of part 52 of this chapter, shall implement the requirements of this section before fuel is allowed onsite (protected area).”*

SNC also requests a schedular exemption from 10 CFR 73.56(a)(3), which states:

*“ ... each holder of a combined license under the provisions of part 52 of this chapter, shall implement the requirements of this section before fuel is allowed on site (protected area).”*

The proposed exemption from the requirements of 10 CFR 73.55(a)(4) and 10 CFR 73.56(a)(3), as interpreted by References 1 and 2, would allow SNC to implement the requirements of a physical protection program in accordance with §73.55 and implement the associated personnel access authorization program requirements in accordance with §73.56 after the NRC finds the requirements of 10 CFR 52.103(g) are satisfied and prior to the start of the unit's initial fuel load.

## 2.0 BACKGROUND and TECHNICAL JUSTIFICATION OF ACCEPTABILITY

10 CFR Part 73 prescribes requirements for the establishment and maintenance of a physical protection program which will have capabilities for the protection of special nuclear material and of plants in which special nuclear material is used. Paragraphs 73.55(a)(4) and 73.56(a)(3) require holders of a COL under Part 52 to implement the requirements of Sections 73.55, “Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage,” and 73.56, “Personnel access authorization requirements for nuclear power plants,” respectively, before unirradiated fuel is allowed onsite at nuclear power reactors (i.e., within the protected area).

For the new (unirradiated) fuel and intermediate range detectors already on-site, SNC has a Special Nuclear Material (SNM) Physical Protection Program (SNMPPP), as described in the VEGP 3&4 Physical Security Plan, which establishes and maintains an SNM physical protection program under 10 CFR 73.67. The approved SNMPPP is to remain in effect until fuel load, by which time the requirements of 10 CFR 73.55 will be implemented and the PA shall be declared operational. Per the SNMPPP, the unirradiated fuel and intermediate range detectors are stored in the Controlled Access Area (CAA). Access to a CAA is controlled and limited to authorized personnel and escorted visitors in accordance with site procedures.

10 CFR Part 52 Licensees met with the NRC staff to obtain clarification regarding the timing and the relationship between the implementation of the 10 CFR 73.55 plan (i.e., protected area declaration) and the 10 CFR 52.103(g) finding by the NRC staff. The NRC staff provided clarification by letter dated April 13, 2017 (Reference 1), stating that

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licensees “may complete the protected area and declare it operable before the NRC staff makes the 10 CFR 52.103(g) finding.” This letter also provided an alternative whereby the licensees may rely on their NRC-approved 10 CFR 73.67 plans to protect SNM prior to the 10 CFR 52.103(g) finding, with the protected area being declared when the 10 CFR 52.103(g) finding is made. Thus, the NRC staff’s clarification only delineates two timing options; one in which the PA is declared operational at the same time as the 10 CFR 52.103(g) finding is made, and one in which the PA is declared operational some time prior to the 10 CFR 52.103(g) finding. The staff’s interpretation was further clarified in a public presentation provided to the VEGP staff on August 27, 2020, in which the staff stated that “[t]he ‘protected area’ exists when the 10 CFR 52.103(g) finding is made because ... 10 CFR 73.55 provides requirements for a power reactor in the operations phase and the facility is in the operations phase when the 10 CFR 52.103(g) finding is made.” (Reference 2)

SNC is requesting an exemption from 10 CFR 73.55(a)(4), , and 10 CFR 73.56(a)(3), as interpreted by References 1 and 2, to allow the implementation of the physical protection program and access authorization program after the NRC makes its 10 CFR 52.103(g) finding. VEGP Units 3 and 4 construction personnel are expected to continue performing construction activities in preparation for fuel load after the 10 CFR 52.103(g) finding, requiring personnel, vehicles, and equipment necessary for construction to pass through the site area that will be part of the operational PA. Implementing a physical protection program and requiring such individuals and equipment to pass through a PA numerous times each day is a costly and unnecessary burden.

As stated in 10 CFR 73.55 paragraph (b), the objective of 10 CFR 73.55 is to provide high assurance that activities involving SNM are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety.

*(b) General performance objective and requirements. (1) 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.*

Per 10 CFR 73.55(b)(3), the physical protection program is designed to prevent significant core damage and spent fuel sabotage.

*The physical protection program must be designed to prevent significant core damage and spent fuel sabotage.*

The regulation does not tie 10 CFR 73.55 compliance to the issuance of a 10 CFR 52.103(g) finding, but rather to core damage and spent fuel sabotage. Without irradiated fuel there can be no significant core damage or spent fuel sabotage, thereby not constituting an unreasonable risk to the public health and safety. Additionally, as stated, SNC has an approved SNMPPP to protect the SNM already on-site where it is stored in the CAA.

The NRC staff reviewed SNC’s SNMPPP and concluded that the methods and procedures outlined in the Physical Security Program satisfy the performance objectives, systems capabilities, and reporting requirements specified in 10 CFR 73.67. The NRC issued a license for SNC to receive fuel under 10 CFR 73.67. Prior to moving fuel outside the CAA



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(i.e., from the Auxiliary Building to Containment in support of fuel load), an operational PA would have to be established, as the SNMPPP can no longer be used for physical protection. Requiring the implementation of a physical protection program, including the establishment of an operational protected area, in addition to the SNMPPP before the 10 CFR 52.103(g) finding is not required per the Code of Federal Regulations and is an unnecessary burden. SNC's position is that a more appropriate milestone for implementing the 10 CFR 73.55 physical protection program and the 10 CFR 73.56 access authorization program is prior to the commencement of fuel load, with sufficient time allocated to allow NRC staff to conduct any necessary pre-implementation reviews and inspection activities.

In License Amendment Request (LAR) 18-008 (Reference 3), SNC proposed changes to Appendix E of the VEGP Units 3 and 4 Physical Security Plan to describe the Transitional Security Measures (TSMs) that will be implemented in the event Unit 3 is ready to load fuel and begin operation with a contiguous PA boundary and vehicle barrier system and a secure boundary between Units 3 and 4. The NRC approved this request and issued COL Amendments 160 and 158 for VEGP Units 3 and 4, respectively (Reference 4). If this exemption is granted, SNC plans to implement the approved exemption as soon as practical following receipt. This will allow Unit 3 final construction and fuel load preparation activities to proceed, concurrent with continuing Unit 4 construction activities. Following the Unit 3 physical protection program implementation, including declaring the Unit 3 PA operational, and implementation of the access authorization program, Unit 3 fuel load activities will commence, while Unit 4 construction activities continue. Similar to Unit 3, receipt of special nuclear material in the form of new fuel at Unit 4 is planned to be conducted under the SNMPPP. The physical protection program and access authorization program will also be implemented for Unit 4 following completion of construction and prior to initial fuel load, based on approval of this proposed exemption.

### **3.0 JUSTIFICATION FOR EXEMPTION**

10 CFR 73.5, Specific Exemptions states that the Commission may grant exemptions from the requirements of the regulations in this part as it determines are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest.

#### **3.1 This exemption is authorized by law**

The NRC has authority under 10 CFR 73.5 to grant exemptions from the requirements of NRC regulations. 10 CFR 73.5 states that the Commission may grant exemptions from the requirements of 10 CFR Part 73 if the specific requirements are met. No law exists that would preclude the changes covered by this exemption request. Additionally, granting of the proposed exemption does not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations.

Accordingly, this requested exemption is "authorized by law," as required by 10 CFR 73.5.

### **3.2 This exemption will not endanger life or property**

The proposed exemption from the requirements of 10 CFR 73.55(a)(4) and 73.56(a)(3) would allow SNC to implement the physical protection program and access authorization program after the NRC declares the requirements of 10 CFR 52.103(g) are satisfied.

The proposed change in which SNC will implement these programs after the 10 CFR 52.103(g) finding instead of prior to the 103(g) finding does not represent any adverse impact to SNC's ability to satisfy other requirements in the regulations or License. The change is needed to allow SNC a practicable amount of time to complete construction activities prior to fuel load. The proposed exemption does not introduce any new industrial, chemical, or radiological hazards that would present a public health or safety risk, nor does it modify or remove any design or operational controls, or safeguards intended to mitigate any existing on-site hazards. Furthermore, the proposed exemption would not allow for a new fission product release path, result in a new fission product barrier failure mode, or create a new sequence of events that would result in fuel cladding failures. Accordingly, this proposed exemption does not present an undue risk from any existing or proposed equipment or systems.

Therefore, the requested exemption from 10 CFR 73.55(a)(4) and 73.56(a)(3), as interpreted by References 1 and 2, would not endanger life or property.

### **3.3 This exemption is consistent with the common defense and security**

The proposed exemption from the requirements of 10 CFR 73.55(a)(4) and 73.56(a)(3) would allow SNC to continue construction activities until an operational PA can be declared. The proposed exemption does not alter the design, function, or operation of any structure or plant equipment that is necessary to maintain a safe and secure status of the plant. Further, the proposed exemption does not alter or otherwise invalidate any Physical Security Hardware-related Inspections, Tests, Analyses, and Acceptance Criteria (PS-ITAAC) closure notifications, which would have been submitted to, and accepted by, the NRC staff in advance of the 10 CFR 52.103(g) finding.

During the period between the 10 CFR 52.103(g) finding and the implementation of the physical protection program and access authorization program, SNM will continue to be stored inside the CAA, and protected in accordance with the requirements of SNC's NRC-approved SNMPPP. Prior to moving fuel outside the CAA (i.e., from the Auxiliary Building to Containment in support of fuel load), the physical protection program and access authorization program will have to be implemented, as the SNMPPP can no longer be used for physical protection. Thus, the proposed exemption has no impact on the licensee's capabilities to protect the unirradiated fuel and intermediate range detectors already on site.

Therefore, the requested exemption is consistent with the common defense and security.

### **3.4 This exemption is in the public interest**

The public has an interest in the efficient execution of regulatory activities. VEGP Units 3 and 4 construction personnel are expected to continue performing construction activities after the 10 CFR 52.103(g) milestone, requiring personnel, vehicles, and equipment necessary for fully completing construction. Requiring such individuals and

equipment to pass through an operational PA numerous times each day is a costly and an unnecessary burden. Implementing a physical protection program, including an operational PA, and an access authorization program after the 10 CFR 52.103(g) finding and before fuel load, allows construction to continue without the burden of adhering to the requirements of 10 CFR 73.55(a)(4) and 10 CFR 73.56(a)(3). Since SNC has an SNMPPP to establish and maintain a physical protection system for the protection of special nuclear material and will implement a 10 CFR 73.55 physical protection program and a 73.56 access authorization program prior to fuel load, SNC has assured the exemption is in the public interest.

#### **4.0 RISK ASSESSMENT**

A risk assessment was not determined to be applicable to address the acceptability of this proposal.

#### **5.0 PRECEDENT EXEMPTIONS**

None.

#### **6.0 SIGNIFICANT HAZARDS DETERMINATION AND ENVIRONMENTAL CONSIDERATIONS**

The proposed exemption has been evaluated against the criteria of 10 CFR 51.21, *Criteria for and identification of licensing and regulatory actions requiring environmental assessments*, and has been determined to meet the categorical exclusion criteria of 10 CFR 51.22, *Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review*, as described below, which evaluates the change against the criteria of 10 CFR 51.22(c)(25).

The requested exemption, which seeks to change the timing of standards required by 10 CFR 73.55(a)(4) and 10 CFR 73.56(a)(3), does not make any changes to the facility or operating procedures and:

- i) Does not involve a significant hazards consideration [10 CFR 51.22(c)(25)(i)]. The standards set forth in 10 CFR 50.92(c) were used to determine whether the requested exemption involved a significant hazards consideration:

**(1) Does the proposed licensing action involve a significant increase in the probability or consequences of an accident previously evaluated?**

Response: No.

The proposed exemption from the requirements of 10 CFR 73.55(a)(4) and 73.56(a)(3) would allow the Licensee to implement the physical protection program and the associated personnel access authorization program requirements after the 10 CFR 52.103(g) finding and before loading fuel into the reactor. The requested exemption does not alter the design, function, or operation of any plant equipment.

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Therefore, granting this exemption would not involve a significant increase in the probability or consequences of an accident previously evaluated.

**(2) Does the proposed licensing action create the possibility of a new or different kind of accident from any accident previously evaluated?**

Response: No.

The requested exemption does not alter the design, function, or operation of any plant equipment. The requested exemption does not create any new failure mechanisms, malfunctions, or accident initiators.

Therefore, granting this exemption does not create the possibility of a new or different kind of accident from any accident previously evaluated.

**(3) Does the proposed licensing action involve a significant reduction in a margin of safety?**

Response: No.

The requested exemption does not adversely affect any structure, system, and component (SSC), SSC design function, or method of performing or controlling a design function. The requested exemption does not affect safety-related equipment or fission product barriers. No safety analysis or design basis acceptance limit or criterion is challenged or exceeded by the requested exemption.

Therefore, it is concluded that granting the proposed exemption does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and accordingly, a finding of "no significant hazards consideration" is justified.

ii) Does not involve a significant change in the types or significant increase in the amounts of any effluents that may be released offsite [10 CFR 51.22(c)(25)(ii)].

The requested exemption does not alter the design, function, or operation of any plant equipment. There are no changes to effluent types, plant radiological or non-radiological effluent release quantities, any effluent release path, or the functionality of any design or operational features credited with controlling the release of effluents during plant operation or construction.

Therefore, it is concluded that the proposed exemption does not involve a significant change in the types or significant increase in the amounts of any effluents that may be released offsite.

iii) Does not involve a significant increase in individual or cumulative public or occupational radiation exposure [10 CFR 51.22(c)(25)(iii)].

There are no changes to plant radiation zones, nor any change to controls required under 10 CFR Part 20 which preclude a significant increase in occupational radiation exposure.

Therefore, it is concluded that the proposed exemption does not involve a significant increase in individual or cumulative public or occupational radiation exposure.

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iv) Does not involve a significant construction impact [10 CFR 51.22(c)(25)(iv)].

The requested exemption does not alter the materials or methods of constructing or testing of any SSCs. No change to the design or construction of the facility is being made as a result of this exemption.

The requested exemption will have a beneficial (i.e., non-significant) impact on construction of VEGP Units 3 and 4 by allowing construction personnel to continue to efficiently perform construction activities between the 10 CFR 52.103(g) finding and the fuel load milestone. Not requiring such individuals and equipment to pass through an operational PA numerous times each day effectively mitigates a costly and an unnecessary burden.

Therefore, it is concluded that the proposed exemption does not involve a significant construction impact.

v) Does not involve a significant increase in the potential for or consequences from radiological accidents [10 CFR 51.22(c)(25)(v)].

The requested exemption does not alter the design, function, or operation of any plant equipment. There are no changes to plant radiation zones, nor any change to controls required under 10 CFR Part 20 which preclude a significant increase in occupational radiation exposure.

Therefore, it is concluded that the proposed exemption does not involve a significant increase in the potential for or consequences from radiological accidents.

vi) Involves Safeguard plan, and materials control and accountability inventory scheduling requirements. [10 CFR 51.22(c)(25)(vi)(F)], and

Involves scheduling requirements [10 CFR 51.22(c)(25)(vi)(G)].

The requested exemption would allow the Licensee to declare an operational PA after the NRC declares the requirements of 10 CFR 52.103(g) are satisfied and prior to the start of the unit's initial fuel load. This is a change to the scheduling requirements of 10 CFR 73.55(a)(4) and 10 CFR 73.56(a)(3), as interpreted by References 1 and 2, which requires the implementation of the requirements of 10 CFR Section 73.55 and 10 CFR 73.56 before fuel is allowed onsite (protected area).

Accordingly, the proposed exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of this exemption.

## 7.0 CONCLUSION

The proposed schedular exemption from the requirements of 10 CFR 73.55(a)(4) and 10 CFR 73.56(a)(3) would allow SNC to implement the Physical Protection Program and Access Authorization Program after the 10 CFR 52.103(g) finding and before initial fuel load.

The proposed change does not represent any adverse impact in SNC's ability to protect the health and safety of the public from radiological sabotage or spent fuel sabotage.

The exemption request meets the requirements of 10 CFR 73.5, *Specific exemptions*, in that the request is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Furthermore, approval of this request meets the eligibility requirements for categorical exclusion from requiring an environmental assessment.

## 8.0 REFERENCES

1. Letter from Francis M. Akstulewicz (NRC) to Mr. Brian H. Whitley (SNC) and Mr. Ronald A. Jones (SCE&G), "Protected Area Considerations for Vogtle Electric Generating Plant Units 3 and 4 and Virgil C. Summer Nuclear Station Units 2 and 3," dated April 13, 2017 [ADAMS Accession Number ML17074A370]
2. NRC presentation for Vogtle 3 Public Meeting 8-27-2020, "Implementation of 10 CFR 73.55" [ADAMS Accession Number ML20238C109]
3. Letter from Brian H. Whitley (SNC) to NRC Document Control Desk, "Request for License Amendment: Physical Security Plan, Appendix E Additions for Unit 3 Transitional Security Measures and Unit 4 Plant-Specific Emergency Planning ITAAC Revision (LAR-18-008)," dated September 28, 2018 [ML18271A116]
4. Letter from Chandu P. Patel (NRC) to Brian H. Whitley (SNC), "Vogtle Electric Generating Plant, Units 3 and 4 – Issuance of Amendments Re: Physical Security Plan, Appendix E Additions for Unit 3 Transitional Security Measures and Unit 4 Plant-Specific Emergency Planning ITAAC Revision (LAR-18-008) (EDIP L-2018-LLA-0262)," dated April 30, 2019 [ML19092A449]