



[7590-01-P]

NUCLEAR REGULATORY COMMISSION

[Docket Nos.: 50-213 and 72-39; NRC-2012-0123]

Connecticut Yankee Atomic Power Company

Haddam Neck Independent Spent Fuel Storage Installation, Staff Evaluation;

Exemption

1.0 BACKGROUND

Connecticut Yankee Atomic Power Company (CYAPCO, the licensee) is the holder of Facility Operating License No. DPR-61 which authorizes possession of nuclear fuel under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect. Per 10 CFR Part 72, Subpart K, a general license is issued for the storage of spent fuel in an Independent Spent Fuel Storage Installation (ISFSI) to persons authorized to possess or operate nuclear power reactors under 10 CFR Part 50. Thus, CYAPCO also holds a 10 CFR Part 72 general license which allows storage of spent fuel and greater than Class C waste at the Haddam Neck ISFSI in East Hampton, Connecticut.

Under Facility Operating License No. DPR-61, CYAPCO operated a Pressurized Water Reactor (PWR) until 1996 when operations ceased. Later, CYAPCO began transferring fuel from the reactor spent fuel pool into vertical dry casks at their ISFSI facility. These activities were completed in 2005, and final decommissioning of the reactor site was completed in 2007. The Haddam Neck ISFSI is a stand-alone ISFSI located on approximately five acres of land that was not released for unrestricted use after completion of decommissioning of the CY PWR.

The Power Reactor Security Rule, which applies to all 10 CFR Part 50 licensees, was revised on March 27, 2009, with compliance required by March 31, 2010 (74 FR 13926). The NRC held a webinar on July 20, 2010, to provide clarification on the applicability of the power reactor security regulations to 10 CFR Part 50 licensees undergoing decommissioning or 10 CFR Part 50 licensees that have only a general licensed ISFSI. On August 2, 2010, the NRC issued a letter to CYAPCO clarifying the applicability of the revised power reactor security regulations to a Part 50 licensee undergoing decommissioning or a Part 50 licensee that has only a general licensed ISFSI. In the August 2, 2010, letter, the NRC noted that there are currently no security or health and safety concerns at these facilities that may not be in compliance with the current 10 CFR 73.55 requirements because the Security Plans at these facilities meet the baseline requirements of the previous version of 10 CFR 73.55 and also meet the requirements of subsequent NRC security orders. The NRC requested a response be submitted within 120 days of receipt of the August 2, 2010, letter.

By letter dated November 30, 2010 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML103570296), CYAPCO responded to the August 2, 2010, letter. In its response, CYAPCO requested exemptions from certain requirements in 10 CFR 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage," which it considered either not applicable or caused an undue burden to a stand-alone ISFSI. CYAPCO also submitted a matrix which described how CYAPCO either complied with 10 CFR 73.55 and applicable orders or needed an exemption. CYAPCO further stated that its exemption request is intended to maintain its NRC-approved Physical Security Plan (PSP). In addition, CYAPCO noted that the statement of consideration for the Power Reactor Security Rule states that the Commission did not intend to make changes to the substantive requirements of 10 CFR 72.212 and that the Commission has initiated a separate rulemaking to revise the ISFSI security requirements (74 FR 13958).

2.0 DISCUSSION

Pursuant to 10 CFR 73.5, "Specific Exemptions," the Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements in 10 CFR 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 evaluated the exemption requests submitted by CYAPCO in its November 30, 2010, letter. After evaluating the exemption requests, the staff determined CYAPCO should be granted exemptions from the following requirements: 10 CFR 73.55(e)(10)(ii) and 73.55(g)(8)(iv). Section 73.55(e)(10)(ii) sets forth requirements for restricting access by waterborne vehicles and 73.55(g)(8)(iv) sets forth access authorization requirements. The remaining exemptions requested were determined either to be inapplicable to the facility or are being met by the licensee's current PSP; therefore, these exemptions were denied. 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.

In considering these exemption requests, the staff reviewed an NRC letter dated January 30, 2003, which issued CYAPCO Amendment No. 199 to Facility Operating License No. DPR-61, and the Haddam Neck ISFSI PSP (Revision 2). The staff also reviewed the revised Power Reactor Security Rule, 10 CFR 73.55, which became effective on May 26, 2009 (74 FR 13926), to identify substantive changes affecting previously approved exemptions. In addition, the staff reviewed inspection reports prepared after conducting inspections of the licensee's facility, procedures, and PSP for compliance with all applicable regulations and NRC Orders. Based upon its review, the staff determined that current barriers and actions implemented under the Haddam Neck ISFSI PSP satisfy the requirements of 10 CFR 73.55, and that granting the requested exemptions will not result in a violation of the Atomic Energy Act

of 1954, as amended (the Act), or the Commission's regulations. Therefore, the exemptions are authorized by law.

The purpose of the regulations in 10 CFR 73.55 is to establish and maintain a physical protection system designed to protect against radiological sabotage. The purpose of 10 CFR 73.55(e)(10)(ii) is to restrict waterborne vehicle access and perform periodic surveillance of waterway approaches. However, there are no pathways which allow waterborne vehicles to gain direct access to the ISFSI. Furthermore, CYAPCO employs site specific barriers as part of its NRC-approved PSP which are appropriate for the reduced radiological risk associated with a stand-alone ISFSI. The purpose of the regulations in 10 CFR 73.55(g)(8)(iv) is to ensure personnel trained as escorts be knowledgeable of where visitors would be working within the protected area and that visitors within the protected area will be escorted. The staff determined that the NRC approved measures currently employed by CYAPCO in its PSP are appropriate for the reduced radiological risk to the public from the ISFSI and are consistent with the general performance standards in 10 CFR 73.55(b). Therefore, the staff concludes that the exemptions do not pose an increased risk to public health and safety and are not inimical to the common defense and security. Given the above considerations, granting this exemption will not endanger life or property or the common defense and security.

As discussed above, the purpose of 10 CFR 73.55 is to protect against radiological sabotage. The staff determined granting CYAPCO an exemption from the requirements of 10 CFR 73.55(e)(10)(ii) and 73.55(g)(8)(iv) would not decrease the level of security currently in place at the Haddam Neck ISFSI, and will not result in increased radiological risk to the public from operation of this general licensed, stand-alone ISFSI. Accordingly, the staff has determined that, pursuant to 10 CFR 73.5, these exemptions are authorized by law and are otherwise in the public interest.

Granting exemptions from the requirements of 10 CFR 73.55(e)(10)(ii) and 73.55(g)(8)(iv) involves safeguards plans. Section 51.22(c)(25)(vi)(F) provides a categorical exclusion for

exemptions involving safeguard plans provided that the criteria in 10 CFR 51.22(c)(25)(i)-(v) are also satisfied. In its review of the exemption request, the NRC determined that, pursuant to 10 CFR 51.22(c)(25): (i) granting the exemptions neither involves a significant reduction in a margin of safety nor creates a new or different kind of accident from any accident previously evaluated, and thus no significant hazards considerations because there is no significant increase in either the probability or consequences of an accident previously evaluated; (ii) granting the exemptions would not produce a significant change in either the types or amounts of any effluents that may be released offsite because the requested exemptions neither change the effluents nor produce additional avenues of effluent release; (iii) granting the exemptions would not result in a significant increase in either occupational radiation exposure or public radiation exposure because the requested exemptions neither introduce new radiological hazards nor increase existing radiological hazards; (iv) granting the exemptions would not result in a significant construction impact because there are no construction activities associated with the requested exemptions; and (v) granting the exemptions would not result in a significant increase in the potential for or consequences from radiological accidents because the exemptions neither reduce the level of security in place at the Haddam Neck ISFSI nor create new accident precursors. Accordingly, this exemption meets the criteria for a categorical exclusion in 10 CFR 51.22(c)(25)(vi)(F).

3.0 CONCLUSION

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, 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. Therefore, the Commission hereby grants CYAPCO an exemption from the 10 CFR 73.55(e)(10)(ii) requirement to restrict waterborne vehicle access and perform periodic surveillance of waterway approaches as well as the 10 CFR 73.55(g)(8)(iv)

requirement for escort personnel to be generally knowledgeable of visitor activities. In addition, CYAPCO shall continue to follow the NRC approved ISFSI PSP and applicable NRC orders. As discussed in the preceding paragraph, the Commission has determined that this exemption meets the criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25)(vi)(F). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the granting of this exemption. These exemptions are effective upon issuance.

Dated at Rockville, Maryland, this 23rd day of May, 2012.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

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