



[7590-01-P]

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-440; NRC-2020-0156]

Energy Harbor Nuclear Corp

Energy Harbor Nuclear Generation LLC

Perry Nuclear Power Plant Unit No 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a May 15, 2020, request from the Energy Harbor Nuclear Corp. (EHNC) to allow EHNC to submit a sufficient license renewal application for Perry Nuclear Power Plant, Unit No. 1, at least three years prior to the expiration of the existing license and still receive timely renewal protection.

DATES: The exemption was issued on July 13, 2020.

ADDRESSES: Please refer to Docket ID **NRC-2020-0156** when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web Site:** Go to <https://www.regulations.gov/> and search for Docket ID **NRC-2020-0156**. Address questions about NRC docket IDs in Regulations.gov to Jennifer Borges; telephone: 301-287-9127; e-mail:

Jennifer.Borges@nrc.gov. For technical questions, contact the individual listed in the

FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System**

(ADAMS): You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the

search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

FOR FURTHER INFORMATION CONTACT: Scott P. Wall, Office of Nuclear Reactor Regulation; U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2855; e-mail: Scott.Wall@nrc.gov.

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: July 14, 2020.

For the Nuclear Regulatory Commission.

Bhalchandra K. Vaidya, Project Manager,
Plant Licensing Branch III,
Division of Operating Reactor Licensing,
Office of Nuclear Reactor Regulation.

Attachment – Exemption.

NUCLEAR REGULATORY COMMISSION

Docket No. 50-440

Energy Harbor Nuclear Corp.

Energy Harbor Nuclear Generation LLC

Perry Nuclear Power Plant, Unit No. 1

Exemption

I. Background.

Energy Harbor Nuclear Corp. (EHNC) and Energy Harbor Nuclear Generation LLC (collectively, the licensees) are the holders of the Facility Operating License No. NPF-58 for Perry Nuclear Power Plant, Unit No. 1 (PNPP), which consists of a boiling-water reactor located near Lake Erie in Lake County, Ohio. 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, Commission) now or hereafter in effect. The current operating license for PNPP expires on March 18, 2026.

By letter dated May 15, 2020 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML20136A353), EHNC requested an exemption to allow EHNC to submit a license renewal application (LRA) for PNPP at least 3 years prior to the expiration of the existing license and, if the NRC finds the application sufficient, to still receive timely renewal protection under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 2, Section 2.109(b). Pursuant to 10 CFR 2.109(b), the NRC provides timely renewal protection to licensees that submit a sufficient license renewal application at least 5 years before the expiration of the existing license.

On May 25, 2017, FirstEnergy Nuclear Operating Company (FENOC), notified the NRC of its plans to submit an LRA for PNPP in the fourth quarter of 2020 (ADAMS Accession No. ML17145A171). On November 27, 2018, FENOC indicated that, with the planned shutdown of PNPP, it no longer planned to submit an LRA (ADAMS Accession No. ML18331A155) due to severe economic challenges.

On July 23, 2019, the Ohio General Assembly passed the Ohio Clean Air Program, which contains provisions that are intended to preserve Ohio's nuclear generation capacity. The Ohio Governor signed the bill into law on July 23, 2019. Based on the Ohio Clean Air Program, FENOC reversed its decision to permanently cease operations at PNPP. As a result, on July 26, 2019 (ADAMS Accession No. ML19207A097), FENOC withdrew the "Certification of Permanent Cessation of Power Operations" for PNPP.

By letter dated February 27, 2020 (ADAMS Accession No. ML20030A440), the NRC staff authorized the transfer of the PNPP facility operating license from FENOC and FirstEnergy Nuclear Generation, LLC, to EHNC and Energy Harbor Nuclear Generation, LLC, which are subsidiaries of a new privately-held holding company, the Energy Harbor Corp. Subsequently, on May 8, 2020 the Energy Harbor Corp. Board of Directors met and approved the plan to submit an application for renewal of the PNPP operating license.

In its application, EHNC informed the NRC that the information previously gathered to support development of an LRA must be updated and incorporated into an application that meets current NRC staff expectations. Under 10 CFR 2.109(b), EHNC would need to file a sufficient LRA for PNPP by March 18, 2021 (at least 5 years prior to the current license expiration date). Given the effort involved, EHNC indicated that it will not have adequate time to prepare and submit a sufficient LRA by March 18, 2021.

II. Request/Action.

Under 10 CFR 54.17(a), the NRC requires that an application for a renewed license be in accordance with Subpart A of 10 CFR Part 2, which includes 10 CFR 2.109(b). In turn, 10 CFR 2.109(b) states, "If the licensee of a nuclear power plant licensed under 10 CFR 50.21(b) or 50.22 files a sufficient application for renewal of either an operating license or a combined license at least 5 years before the expiration of the existing license, the existing license will not be deemed to have expired until the application has been finally determined." In its letter dated May 15, 2020, EHNC requested an exemption from 10 CFR 54.17(a) to allow EHNC to submit its LRA for PNPP at least 3 years prior to the expiration of the existing license and still receive timely renewal protection under 2.109(b).

III. Discussion.

Under 10 CFR 54.15, exemptions from the requirements of Part 54 are governed by 10 CFR 50.12. Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present, as defined in 10 CFR 50.12(a)(2). In its application, EHNC stated that two special circumstances apply to its request: 10 CFR 50.12(a)(2)(ii), "[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule;" and 10 CFR 50.12(a)(2)(iii), "[c]ompliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated."

A. The Exemption is Authorized by Law

This exemption would allow EHNC to submit a sufficient LRA license renewal application for PNPP at least 3 years prior to the expiration of its existing license and still receive timely renewal protection under 10 CFR 2.109(b). Section 2.109 implements Section 9(b) of the Administrative Procedure Act (APA), 5 U.S.C. §558(c), which states:

When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

The 5-year time period specified in 10 CFR 2.109 is the result of a discretionary agency rulemaking and not required by the APA. As stated above, 10 CFR 54.15 allows the NRC to grant exemptions from the requirements of 10 CFR Part 54. The NRC has determined that granting this exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, the APA, or the NRC's regulations. Therefore, the exemption is authorized by law.

B. The Exemption Presents no Undue Risk to Public Health and Safety

The requested exemption to allow a 3-year time period, rather than the 5 years specified in 10 CFR 2.109(b), for EHNC to submit a sufficient license renewal application and receive timely renewal protection is a scheduling change. The action does not change the manner in which the plant operates and maintains public health and safety because no additional changes are made as a result of the action. The NRC expects that a period of 3 years provides sufficient time for the NRC to perform a full and adequate safety and environmental review, and for the completion of the hearing process. Pending final action on the LRA, the NRC will continue to conduct all regulatory activities associated with licensing, inspection, and oversight, and will take whatever action may be necessary to ensure adequate protection of the public health and safety. The existence of this exemption does not affect NRC's authority, applicable to all licenses, to modify, suspend, or revoke a license for cause, such as a serious

safety concern. Based on the above, the NRC finds that the action does not cause undue risk to public health and safety.

C. The Exemption is Consistent with the Common Defense and Security

The requested exemption to allow for a timely renewal protection deadline of at least 3 years instead of 5 years is a scheduling change. The exemption does not change any site security matters. Therefore, the NRC finds that the action is consistent with the common defense and security.

D. Special Circumstances

The purpose of 10 CFR 2.109(b), as it is applied to nuclear power reactors licensed by the NRC, is to implement the “timely renewal” provision of Section 9(b) of the APA, 5 U.S.C. § 558(c), which states:

When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

The underlying purpose of this “timely renewal” provision in the APA is to protect a licensee who is engaged in an ongoing licensed activity and who has complied with agency rules in applying for a renewed or new license from facing license expiration as the result of delays in the administrative process.

On December 13, 1991, the NRC published the final license renewal rule, 10 CFR Part 54, with associated changes to 10 CFR Parts 2, 50, and 140, in the *Federal Register* (56 FR 64943). The statement of considerations (SOC) discussed the basis for establishing the latest date for filing license renewal applications and the timely renewal doctrine (56 FR 64962). The SOC stated that:

Because the review of a renewal application will involve a review of many complex technical issues, the NRC estimates that the technical review would take approximately 2 years. Any necessary hearing could likely add an additional year or more. Therefore, in the proposed rule, the Commission modified § 2.109 to require that nuclear power plant operating license renewal applications be submitted at least 3 years prior

to their expiration in order to take advantage of the timely renewal doctrine.

No specific comment was received concerning the proposal to add a 3-year provision for the timely renewal provision for license renewal. The current regulations require licensees to submit decommissioning plans and related financial assurance information on or about 5 years prior to the expiration of their operating licenses. The Commission has concluded that, for consistency, the deadline for submittal of a license renewal application should be 5 years prior to the expiration of the current operating license. The timely renewal provisions of § 2.109 now reflect the decision that a 5-year time limit is more appropriate.

Thus, the NRC originally estimated that 3 years was needed to review a renewal application and to complete any hearing that might be held on the application. The NRC changed its original deadline from 3 years to 5 years to have consistent deadlines for when licensees must submit their decommissioning plans and related financial assurance information and when they must submit their LRA to receive timely renewal protection.

Application of the five-year period in 10 CFR 2.109(b) is not necessary to achieve the underlying purpose of the timely renewal provision in the regulation if EHNC files a sufficient PNPP license renewal application at least three years prior to expiration of the license. The NRC's current schedule for review of LRAs is to complete its review and make a decision on issuing the renewed license within 18 months of receipt without a hearing. If a hearing is held, the NRC's model schedule anticipates completion of the NRC's review and of the hearing process, and issuance of a decision on the license renewal application within 30 months of receipt.

However, it is recognized that the estimate of 30 months for completion of a contested hearing is subject to variation in any given proceeding. A period of 3 years (36 months), nevertheless, is expected to provide sufficient time for performance of a full and adequate safety and environmental review, and completion of the hearing process. Meeting this schedule is based on a complete and sufficient application being submitted

and on the review being completed in accordance with the NRC's established license renewal review schedule.

Based on the above, the NRC finds that the special circumstance of 10 CFR 50.12(a)(2)(ii) is present in the particular circumstances of PNPP.

It should be noted among the key matters central to resolution of issues associated with renewal of the operating license and also to the application of the "timely renewal" doctrine is the submission of a sufficient application. Completing the license renewal review process on schedule is, of course, dependent on licensee cooperation in meeting established schedules for submittal of any additional information required by the NRC, and the resolution of all issues demonstrating that issuance of a renewed license is warranted.

In addition, the NRC finds that the special circumstance of 10 CFR 50.12(a)(2)(iii) also is present in the circumstances of PNPP. Compliance with § 2.109(b) would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted. In its application, EHNC stated that the decision to continue power operation at PNPP depended on economic and legislative factors that evolved in a way that did not permit the preparation and submission of a license renewal application five years prior to the license expiration date. EHNC further stated that if the exemption is not granted, and it submits its license renewal application less than five years before license expiration, then EHNC would face the risk of being forced to shut down if the application is not approved before the current license expires. The impact of changes in economic and legislative conditions on licensees' decisions to pursue license renewal was not a factor considered at the time the timely renewal rule was issued. The NRC therefore finds that the special circumstance of 10 CFR 50.12(a)(2)(iii) also is present.

E. Environmental Considerations

The NRC's approval of the exemption to scheduling requirements belongs to a category of actions that the NRC, by rule or regulation, has declared to be a categorical exclusion, after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment. Specifically, the exemption is categorically excluded from further analysis under 10 CFR 51.22(c)(25)(vi)(G).

Under 10 CFR 51.22(c)(25), the granting of an exemption from the requirements of any regulation of chapter 10 is a categorical exclusion provided that (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 certain categories of requirements, including scheduling requirements.

The NRC has determined that the granting of the exemption request involves no significant hazards consideration because allowing the submittal of the LRA at least 3 years before the expiration of the existing license while maintaining the protection of the timely renewal provision in 10 CFR 2.109(b) does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The exemption constitutes a change to the schedule by which EHNC must submit its LRA and still receive timely renewal protection and, therefore, is unrelated to any operational restriction. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, and no significant increase

in individual or cumulative public or occupational radiation exposure. The exempted regulation is not associated with construction, so there is no significant construction impact. The exempted regulation does not concern the source term (i.e., potential amount of radiation in an accident) nor mitigation. Thus, there is no significant increase in the potential for, or consequences of, a radiological accident.

Therefore, pursuant to 10 CFR 51.22(b) and (c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

IV. Conclusions.

Accordingly, the NRC has determined that, pursuant to 10 CFR 54.15 and 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the NRC hereby grants the licensee a one-time exemption for PNPP, from 10 CFR 54.17(a) to allow the submittal of the PNPP LRA at least 3 years remaining prior to expiration of the operating license while maintaining the protection of the timely renewal provision in 10 CFR 2.109(b).

This exemption is effective upon issuance.

Dated July 13, 2020.

For the Nuclear Regulatory Commission.

/RA/

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Division of Operating Reactor Licensing,
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