



NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-315 and 50-316; NRC-2020-0178]

Indiana Michigan Power Company; Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to an April 7, 2020 request from Indiana Michigan Power Company (I&M, the licensee). The issuance of the exemption would permit I&M to align the regulatory requirements for reporting frequency with the current Final Safety Analysis Report update frequency for the Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2.

DATES: The exemption was issued on October 1, 2020.

ADDRESSES: Please refer to Docket ID **NRC-2020-0178** 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-2020-0178**. 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: October 2, 2020.

For the Nuclear Regulatory Commission.

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Office of Nuclear Reactor Regulation.

Attachment – Exemption.

NUCLEAR REGULATORY COMMISSION

Docket Nos. 50-315 and 50-316

Indiana Michigan Power Company

Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2

Exemption

I. Background.

The Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2 (CNP), is a two-unit nuclear power plant located in Berrien County, Michigan. Indiana Michigan Power Company (I&M, the licensee) holds Renewed Facility Operating License Nos. DPR-58 and DPR-74 for CNP. These licenses are subject to the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission).

II. Request/Action.

By letter dated April 7, 2020 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML20126G456), I&M requested an exemption from requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Section 54.37, “Additional records and recordkeeping requirements,” and 10 CFR 50.54, “Conditions of licenses,” specifically with respect to their references to 10 CFR 50.71, “Maintenance of records, making of reports,” paragraph (e).

10 CFR 50.71(e)(4) states, in part, that “Subsequent revisions [to the final safety analysis report (FSAR)] must be filed annually or 6 months after each refueling outage provided the interval between successive updates does not exceed 24 months.” The two CNP units share a common FSAR; therefore, this rule requires the licensee to update that same document within 6 months after a refueling outage for either unit. By

letter dated March 3, 1998 (ADAMS Accession No. ML021090203), the NRC granted I&M an exemption from 10 CFR 50.71(e)(4) for CNP, which allowed the licensee to submit FSAR updates after each Unit No. 1 refueling outage, not to exceed 24 months between successive updates. This exemption was granted before renewed licenses were issued for CNP.

10 CFR 54.37(b) states, in part:

After the renewed license is issued, the FSAR update required by 10 CFR 50.71(e) must include any systems, structures, and components newly identified that would have been subject to an aging management review or evaluation of time-limited aging analyses in accordance with [10 CFR] 54.21.

10 CFR 50.54(a)(3) states, in part:

Changes to the quality assurance program description that do not reduce the commitments must be submitted to the NRC in accordance with the requirements of [10 CFR] 50.71(e).

The references in 10 CFR 54.37(b) and 10 CFR 50.54(a)(3) to 10 CFR 50.71(e) can be interpreted to include the reporting frequency prescribed in 10 CFR 50.71(e)(4). If interpreted in this way, 10 CFR 54.37(b) would require information related to newly identified systems, structures, and components at CNP that are subject to an aging management review or evaluation of time-limited aging analyses, and 10 CFR 50.54(a)(3) would require changes to the quality assurance program description that do not reduce the commitments, to be submitted to the NRC “annually or 6 months after each refueling outage provided the interval between successive updates does not

exceed 24 months,” despite the NRC’s March 3, 1998 approval of an exemption from 10 CFR 50.71(e)(4) for CNP. The exemption that I&M now requests from 10 CFR 54.37(b) and 10 CFR 50.54(a)(3) would permit I&M to align the reporting frequency of these requirements with the CNP FSAR update frequency permitted by the March 3, 1998 exemption.

III. Discussion.

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, which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security and when any of the special circumstances listed in 10 CFR 50.12(a)(2) are present. These special circumstances include, among other things:

(a) Application 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

(b) Compliance 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.

10 CFR 54.15 states that exemptions from the requirements of 10 CFR Part 54 may be granted by the Commission in accordance with 10 CFR 50.12.

A. Authorized by Law

The requested exemption from 10 CFR 54.37(b) and 10 CFR 50.54(a)(3) would permit I&M to align the reporting frequency of these requirements with the CNP FSAR update frequency permitted by the March 3, 1998 exemption. As stated above, 10 CFR 50.12 and 10 CFR 54.15 allow the NRC to grant exemptions from the requirements of 10 CFR Parts 50 and 54 when the exemptions are authorized by law.

The NRC staff has determined, as explained below, that granting the licensee's proposed exemption will 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.

B. No Undue Risk to the Public Health and Safety

The underlying purpose of 10 CFR 50.71(e)(4) is to ensure that licensees periodically update their FSARs so that they accurately reflect the plant design and operation, which includes changes required pursuant to 10 CFR 54.37(b) and 10 CFR 50.54(a)(3). The NRC has determined by rule that a frequency not exceeding 24 months between successive updates is acceptable for maintaining FSAR content up-to-date. The requested exemption would provide an equivalent level of protection to the existing requirements because it ensures that updates to the CNP FSAR are submitted with no greater than 24 months between successive updates. The requested exemption would also meet the intent of the rule with respect to regulatory burden reduction. Additionally, based on the nature of the requested exemption and the fact that updates will not exceed 24 months from the last submittal as described above, no new accident precursors would be created by the exemption; therefore, neither the probability nor the consequences of postulated accidents would be increased. In conclusion, the requested exemption will not present an undue risk to the public health and safety.

C. Consistent with the Common Defense and Security

The requested exemption from 10 CFR 54.37(b) and 10 CFR 50.54(a)(3) with respect to their references to 10 CFR 50.71(e) would allow I&M to continue to submit its periodic updates to the CNP FSAR within 6 months after each CNP, Unit No. 1 refueling outage, not to exceed 24 months from the last submittal. Neither these regulations nor the proposed exemption thereto has any relation to security issues. Therefore, the common defense and security is not impacted by the requested exemption.

D. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of 10 CFR 54.37(b) and 10 CFR 50.54(a)(3) is to ensure that licensees periodically update their FSARs with changes required by these regulations so that the FSARs remain up-to-date and accurately reflect the plant design and operation. As previously described, the references in 10 CFR 54.37(b) and 10 CFR 50.54(a)(3) to 10 CFR 50.71(e) can be interpreted to include the reporting frequency prescribed in 10 CFR 50.71(e)(4). If interpreted in this way, strict compliance with the 10 CFR 54.37(b) and 10 CFR 50.54(a)(3) reporting requirements at CNP, where the FSAR is updated at a frequency permitted by the March 3, 1998 exemption, would create a disconnect between these report updates and the FSAR update. Specifically, since CNP is a dual-unit facility with a single shared FSAR and staggered refueling outages, application of the phrase “after each refueling outage” in 10 CFR 50.71(e)(4), as it relates to 10 CFR 54.37(b) and 10 CFR 50.54(a)(3), would result in more frequent report updates than are necessary to achieve the underlying purpose of the rule. Therefore, special circumstances are present per 10 CFR 50.12(a)(2)(ii).

E. Environmental Considerations

With respect to its impact on the quality of the human environment, the NRC has determined that the issuance of the exemption discussed herein meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25). Under 10 CFR 51.22(c)(25), the granting of an exemption from the requirements of any regulation of 10 CFR Chapter I (which includes 10 CFR 54.37 and 10 CFR 50.54) is an action that 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:
 - (A) Recordkeeping requirements;
 - (B) Reporting requirements;
 - (C) Inspection or surveillance requirements;
 - (D) Equipment servicing or maintenance scheduling requirements;
 - (E) Education, training, experience, qualification, requalification or other employment suitability requirements;
 - (F) Safeguard plans, and materials control and accounting inventory scheduling requirements;
 - (G) Scheduling requirements;
 - (H) Surety, insurance or indemnity requirements; or
 - (I) Other requirements of an administrative, managerial, or organizational nature.

The NRC staff's determination that all of the criteria for this categorical exclusion are met is as follows:

- I. 10 CFR 51.22(c)(25)(i): There is no significant hazards consideration.

Staff Analysis: The criteria for determining whether an action involves a significant hazards consideration are found in 10 CFR 50.92. The proposed action involves only a schedule change regarding the submission of an update to the

application. Therefore, there are no significant hazards considerations because granting the exemption would 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.

II. 10 CFR 51.22(c)(25)(ii): There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite.

Staff Analysis: The proposed action involves only a schedule change, which is administrative in nature, and does not involve any changes in the types or significant increase in the amounts of any effluents that may be released offsite.

III. 10 CFR 51.22(c)(25)(iii): There is no significant increase in individual or cumulative public or occupational radiation exposure.

Staff Analysis: Since the proposed action involves only a schedule change, which is administrative in nature, it does not contribute to any significant increase in individual or cumulative public or occupational radiation exposure.

IV. 10 CFR 51.22(c)(25)(iv): There is no significant construction impact.

Staff Analysis: Since the proposed action involves only a schedule change, which is administrative in nature, it does not involve any construction impact.

- V. 10 CFR 51.22(c)(25)(v): There is no significant increase in the potential for or consequences from radiological accidents.

Staff Analysis: The proposed action involves only a schedule change, which is administrative in nature and does not impact the potential for or consequences from radiological accidents.

- VI. 10 CFR 51.22(c)(25)(vi): The requirements from which the exemption is sought involve scheduling requirements and other requirements of an administrative, managerial, or organizational nature.

Staff Analysis: The proposed action involves scheduling requirements and other requirements of an administrative, managerial, or organizational nature because it is associated with the requirement in 10 CFR 50.71(e)(4), which stipulates that revisions to the FSAR must be filed annually or 6 months after each refueling outage provided the interval between successive updates does not exceed 24 months.

Based on the above, the NRC staff concludes that the proposed exemption meets the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(25). Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC's issuance of this exemption.

IV. Conclusions.

The NRC has determined that, pursuant to 10 CFR 50.12 and 10 CFR 54.15, 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 I&M an exemption from

the requirements of 10 CFR 54.37(b) and 10 CFR 50.54(a)(3) with respect to their references to 10 CFR 50.71(e) to allow I&M to continue to submit its periodic updates to the CNP FSAR within 6 months after each CNP, Unit No. 1 refueling outage, not to exceed 24 months from the last submittal.

This exemption is effective upon issuance.

Dated October 1, 2020.

For the Nuclear Regulatory Commission.

/RA/

David J. Wrona, Acting Deputy Director,
Division of Operating Reactor Licensing,
Office of Nuclear Reactor Regulation.

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