

Fuel and High-Level Radioactive Waste,” an ISFSI may be licensed either under a general or a specific license. Under a general license, a licensee can construct and operate an ISFSI in accordance with the requirements of 10 CFR 72.212, “Conditions of general license issued under § 72.210 [,”General license issued”],” without staff approval. Pursuant to 10 CFR 72.212(b)(5), a licensee must protect the spent fuel at the ISFSI against the design basis threat (DBT) of radiological sabotage in accordance with the same provisions and requirements as are set forth in the licensee’s 10 CFR 73.55 physical security plan, with additional conditions and exceptions.

Alternatively, an ISFSI can be constructed under a 10 CFR part 72 specific license, which requires a licensee to develop a detailed security plan in accordance with 10 CFR 73.51, “Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste.” The design objective of 10 CFR 73.51 is to protect against a loss of control of the facility that could be sufficient to cause radiation exposure exceeding the dose as described in 10 CFR 72.106, “Controlled area of an ISFSI or MRS (monitored retrievable storage).”

In an August 21, 2000, **Federal Register** notice (65 FR 50606), the Commission clarified portions of 10 CFR part 72, stating that the requirements of 10 CFR 72.106 apply to ISFSIs with either general or specific licenses. The offsite dose limits of 10 CFR 72.106 are defined such that any individual on or beyond the nearest boundary of the controlled area may not receive from any design basis accident the more limiting of a total effective dose equivalent of 0.05 Sv (5 rem) or the sum of the deep-dose equivalent and the committed dose equivalent to any individual organ or tissue of 0.5 Sv (50 rem).

## 2.0 Request

Pursuant to 10 CFR 72.212(b)(5), licensees who store their spent fuel under the provisions of 10 CFR part 72, subpart K, “General License for Storage of Spent Fuel at Power Reactor Sites,” as YAEC proposes to do, are required to “Protect the spent fuel against the design basis threat of radiological sabotage in accordance with the same provisions and requirements as are set forth \* \* \*” in 10 CFR 73.55.

By letter dated September 28, 2000, as supplemented by letters dated October 12, 2000, April 18, 2001, May 29, 2001, June 28, 2001, and March 4, 2002, the licensee requested an exemption from certain requirements of 10 CFR 73.55.

YAEC proposed alternative approaches to meet the provisions of portions of 10 CFR 73.55(b) through (h) related to the security organization, physical barriers, access requirements, detection aids, communications, and response requirements. By this same correspondence, the licensee also requested a license amendment that would revise Facility Operating License No. DPR-3 to reference the revisions of the Physical Security Plan, Guard Training and Qualification Plan, and Safeguards Contingency Plan, and made available a copy of the YAEC plans to assist the staff in its review of the exemption and amendment requests.

## 3.0 Discussion

Pursuant to 10 CFR 72.7, “Specific exemptions,” and 10 CFR 73.5, “Specific exemptions,” the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations that 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. Pursuant to 10 CFR 73.55(a), the Commission may authorize a licensee to provide measures for protection against radiological sabotage other than those specified in the regulations if the licensee demonstrates that the measures have the same high assurance objective as specified in 10 CFR 73.55(a) and that the overall level of system performance provides protection against radiological sabotage equivalent to that which could be provided by paragraphs (b) through (h) of 10 CFR 73.55.

The staff has reviewed the proposed YAEC ISFSI and Fuel in Transit (FIT) Physical Protection Programs against the requirements of each section of 10 CFR 73.55 to determine whether the alternative measures that YAEC proposed should be authorized pursuant to 10 CFR 73.55(a), or whether specific exemptions should be granted from the requirements of these regulations. As part of its review, the staff evaluated the offsite dose that would result from unimpeded access by the DBT of radiological sabotage without protracted loss of control of the facility. On the basis of YAEC’s plan in the ISFSI Physical Protection Program to maintain the boundary of its controlled area at a minimum of 300 meters from the dry cask storage installation and provisions in the ISFSI Physical Protection Program that provide the capability to summon off-site local law-enforcement agency response forces to preclude a protracted loss of control of the facility, the staff concluded that the DBT of

radiological sabotage would result in an offsite dose well below the 10 CFR 72.106(b) limits. The staff therefore concluded that the alternative measures proposed by YAEC are authorized pursuant to 10 CFR 73.55(a), with one exception. With regard to the requirements of 10 CFR 73.55(d)(5), the staff concluded that the measures proposed by YAEC did not meet the criteria of 10 CFR 73.55(a) to be authorized as alternative measures. However, the staff concluded that pursuant to 10 CFR 72.7 and 10 CFR 73.5, the proposed alternatives to the requirements of 10 CFR 73.55(d)(5) that YAEC requested could be granted as an exemption. A detailed discussion of the staff’s evaluation is contained in the safety evaluation supporting these findings dated March 13, 2002, which safeguards information in accordance with 10 CFR 73.21 and therefore, is not available to the public.

## 4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 72.7 and 10 CFR 73.5, exemption from the requirements of 10 CFR 73.55(d)(5) related to access requirements is authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest.

Pursuant to 10 CFR 51.32, “Finding of no significant impact,” the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (66 FR 48720, dated September 21, 2001).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 13th day of March 2002.

For the Nuclear Regulatory Commission.

**John A. Zwolinski,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

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## NUCLEAR REGULATORY COMMISSION

### Public Meeting on an Overview of Recent Activities Related to the Potential High-Level Waste Repository at Yucca Mountain, Nevada

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of public meetings in Beatty, Tonopah, and Ely, Nevada.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) staff will hold three public meetings on regulation of a potential high-level waste repository at Yucca Mountain. The meetings are intended to foster a common understanding among the stakeholders on safety and regulatory issues, should the U.S. Department of Energy (DOE) submit a license application to the NRC for a possible geologic repository at Yucca Mountain, Nevada. All meetings will be facilitated by Francis X. Cameron, Special Counsel for Public Liaison, Office of the General Counsel, NRC.

The meetings are primarily to acquaint the public with the NRC oversight of a potential high-level waste repository at Yucca Mountain. It will begin with an overview of NRC's responsibilities, include a discussion of NRC's regulations and preparations for evaluating a potential U.S. Department of Energy (DOE) license application, and conclude with an overview of the NRC's role with respect to the transportation of high-level waste. Several opportunities for questions will be provided. In addition, members of the NRC staff will be available for discussion with members of the public. The dates, times, and locations of the public meetings are shown below.

**Date/Time:** Monday, April 8, 2002, from 6:30 p.m.—9:00 p.m. (Pacific time). Tuesday, April 9, 2002, from 6:30 p.m.—9:00 p.m. (Pacific time). Wednesday, April 10, 2002, from 6:30 p.m.—9:00 p.m. (Pacific time).

**Place:** Beatty Senior Center, 150 A Avenue South, Beatty, Nevada. Tonopah Convention Center, 301 West Brougner Avenue, Tonopah, Nevada. Holiday Inn Prospector Inn & Casino, 1501 E. Aultman Street, Ely, Nevada/

**FOR FURTHER INFORMATION CONTACT:** Francis X. Cameron, Special Counsel for Public Liaison, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by telephone: (301) 415-1642 or e-mail: [fxc@nrc.gov](mailto:fxc@nrc.gov).

Dated at Rockville, Maryland, this 14th day of March, 2002.

For the Nuclear Regulatory Commission.

**Janet R. Schlueter,**

*Chief, High-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27498]

### Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 15, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 9, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 9, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### Xcel Energy, Inc., et al. (70-10059)

Xcel Energy, Inc., ("Xcel"), a registered holding company, and its wholly owned subsidiary, NRG Acquisition Company, LLC ("Acquisition Company," and together with Xcel, "Applicants"), both located at 800 Nicollet Mall, Minneapolis, Minnesota 55402, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 11, 12(b), 32 and 33 of the Act and rules 51, 53, 54 and 58 under the Act.

Applicants propose to commence a tender or exchange offer ("Exchange Offer") for Xcel to acquire the outstanding common stock of NRG Energy, Inc. ("NRG"),<sup>1</sup> a Delaware

corporation and a majority owned indirect subsidiary of Xcel,<sup>2</sup> under the terms of a plan approved by Xcel's board of directors on February 14, 2002. In the Exchange Offer, Xcel proposes to acquire the outstanding publicly held shares of NRG, representing approximately a 26 percent minority interest, by exchanging NRG common stock for .4846 shares of Xcel common stock in the Exchange Offer in a tax-free exchange. Applicants also propose to acquire the balance of the shares of NRG's common stock not tendered in the Exchange Offer by means of a short-form merger permitted under Delaware law ("Short-Form Merger"). Xcel proposes to issue up to 24.7 million shares of its common stock in exchange for NRG's common stock obtained in the Exchange Offer and Short-Form Merger.<sup>3</sup>

Under the terms of the Exchange Offer, in order to be successful, enough shares of NRG common stock will need to be tendered so that Xcel's ownership level of NRG reaches 90 percent. If the Exchange Offer results in 90 percent ownership, Wholesale will contribute enough shares of NRG common stock to Acquisition Company to permit Xcel to own at least 90 percent of NRG. Subsequently, Acquisition Company will merge through the Short-Form Merger with and into NRG. Each outstanding share of NRG common stock not acquired in the Exchange Offer will be converted in the Short-Form Merger into the right to receive 0.4846 shares of Xcel in the Exchange Offer. After completion of the Exchange Offer and the Short-Form Merger, Xcel will own NRG as an indirect, wholly owned subsidiary. Xcel states that its investment in NRG will be included as part of Xcel's investment in exempt wholesale generators and foreign investment companies for purposes of sections 32 and 33 of the Act.

of energy, capacity and related products. NRG's common stock is publicly traded and listed on the New York Stock Exchange under the symbol "NRG."

<sup>2</sup> Xcel indirectly owns shares of NRG's common stock through its wholly owned subsidiary, Xcel Energy Wholesale Group, Inc. ("Wholesale"). Xcel owns 147,604,500 shares of NRG's Class A Common Stock, each of which is convertible at any time into one share of NRG's Common Stock. The Class A Common Stock represents 74.3% of all of the outstanding shares of both classes of NRG's common shares combined. Because each share of Class A Common Stock entitles Xcel to ten votes, Xcel currently holds 96.7% of the combined voting power of all of NRG's outstanding common shares.

<sup>3</sup> The shares of Xcel's common stock to be issued in the Exchange Offer and the Short-Form Merger will come from Xcel's authorized but unissued shares.

<sup>1</sup> NRG is an independent power producer and a leading global energy company, primarily engaged in the acquisition, development, ownership and operation of power generation facilities and the sale