



Record of Decision

DEC 21-H101

Licensees	Bruce Power Inc., Canadian Nuclear Laboratories, Hydro-Quebec, New Brunswick Power Corporation, and Ontario Power Generation Inc.
Subject	Temporary exemption under section 7 of the <i>Nuclear Safety and Control Act</i> of High-Security Site Licensees from subsection 36(2) of the <i>Nuclear Security Regulations</i>
Date of Decision	June 21, 2021

RECORD OF DECISION – DEC 21-H101

Licenses: Bruce Power Inc., Canadian Nuclear Laboratories, Hydro-Quebec, New Brunswick Power Corporation, and Ontario Power Generation Inc.

Purpose: Temporary exemption under section 7 of the *Nuclear Safety and Control Act* of High-Security Site licensees from subsection 36(2) of the *Nuclear Security Regulations*

Submission received: March 31, 2021

Hearing: Hearing in Writing – Notice of Hearing in Writing published on [April 20, 2021](#)

Date of decision: June 21, 2021

Panel of Commission: Dr. Timothy Berube

Exemption from subsection 36(2) of the *Nuclear Security Regulations*: Granted

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1.0 INTRODUCTION

1. The Canadian Nuclear Safety Commission¹ (CNSC) has considered whether to temporarily exempt, under section 7 of the *Nuclear Safety and Control Act*² (NSCA), Bruce Power Inc., Canadian Nuclear Laboratories (CNL), Hydro-Quebec, New Brunswick Power Corporation (NB Power), and Ontario Power Generation Inc. (OPG) (collectively, the high-security site³ [HSS] licensees) from the application of subsection 36(2) of the *Nuclear Security Regulations* (NSR) in the form of a 12- to 24-month deferral. This exemption would apply to the HSS licensees' facilities at the Bruce Nuclear Generating Station (NGS), Chalk River Laboratories, Whiteshell Laboratories, the Gentilly-2 Nuclear Installation, the Point Lepreau NGS, the Darlington NGS, and the Pickering NGS (collectively the HSSs).
2. Subsection 36(2) of the NSR states that “*Every licensee⁴ shall conduct or cause to be conducted at a facility at which it carries on licensed activities, in cooperation with the off-site response force, at least one security exercise every two years to test the effectiveness of the contingency plan and of the physical protection system.*” To meet the requirement of subsection 36(2) of the NSR, HSS licensees conduct Force-on-Force (FoF) security exercises, scheduled according to a staggered⁵ two-year cycle.
3. As a result of the COVID-19 pandemic, HSS licensees are operating under public health measures and guidelines. Consequently, HSS licensees have postponed, or will postpone, the conduct of FoF security exercises. HSS licensees have made this request⁶ in order to reduce the risk of incurring an outbreak of COVID-19 within their Nuclear Response Force (NRF) members.
4. CNSC staff have assessed the HSS licensees' request, and have recommended to the Commission that an exemption from the application of subsection 36(2) of the NSR in the form of a 12- to 24-month deferral would provide sufficient time for HSS licensees to resume FoF security exercises, while reducing risk to the health and safety of persons posed by the COVID-19 pandemic.
5. Section 7 of the NSCA states that “*The Commission may, in accordance with the regulations, exempt any activity, person, class of person or quantity of a nuclear substance, temporarily or permanently, from the application of this Act or the regulations or any provision thereof.*” The Commission has the authority to grant an exemption from this regulatory requirement.

¹ The *Canadian Nuclear Safety Commission* is referred to as the “CNSC” when referring to the organization and its staff in general, and as the “Commission” when referring to the tribunal component.

² S.C. 1997, c. 9

³ “High-security site” is defined under section 1 of the NSR as “*a nuclear power plant or a nuclear facility where Category I or II nuclear material is processed, used, or stored*”.

⁴ In the context of section 36 of the NSR, “licensee” means high-security site licensee.

⁵ Staggered means that FoF security exercises are scheduled at different times throughout the cycle.

⁶ An application was not submitted to the Commission in this matter, rather the HSS licensees' request was incorporated into the submission from CNSC staff.

Issue

6. In considering whether to grant the exemption under section 7 of the NSCA, the Commission has considered, pursuant to section 11 of the [*General Nuclear Safety and Control Regulations*](#) (GNSCR), whether exercising the discretion to exempt will:
- a) pose an unreasonable risk to the environment or the health and safety of persons;
 - b) pose an unreasonable risk to national security; or
 - c) result in a failure to achieve conformity with measures of control and international obligations to which Canada has agreed.

Panel

7. Pursuant to section 22 of the NSCA, the President established a Panel of the Commission, consisting of Dr. Timothy Berube, to hear the request for exemption. The Commission, in conducting a hearing based on written materials, considered written submissions from CNSC staff (CMD 21-H101 and CMD 21-H101.A), which are not publicly available due to nuclear security considerations.

2.0 DECISION

8. Based on its consideration of the matter, as described in more detail in the following sections of this *Record of Decision*, the Commission has determined to temporarily exempt the HSS licensees from the application of subsection 36(2) of the NSR, for the purposes of meeting COVID-19 pandemic safety protocols and accommodating the staggered schedule of FoF security exercises. The Commission is satisfied that the conditions of section 11 of the GNSCR are satisfied.
9. Therefore, pursuant to section 7 of the NSCA, the Commission temporarily exempts the HSS licensees from the requirement of subsection 36(2) of the NSR.
10. This exemption is valid for 12 to 24 months from the date that, but for the exemption, an HSS licensee would have been required to conduct a FoF security exercise at its facility in accordance with its current⁷ two-year cycle. In practical terms, the exemption will increase each HSS licensee's current two-year FoF security exercise cycle to up to four years, following which the two-year cycle will resume.

⁷ As of April 1, 2020.

11. The Commission directs CNSC staff to implement the effect of this decision as recommended in the resumption schedule that is outlined in CMD 21-H101. The Commission instructs CNSC staff to issue formal correspondence to the HSS licensees clearly indicating the rescheduled dates of their respective FoF security exercise and the resumption of the two-year cycle.
12. HSS licensees will resume their respective FoF security exercise schedules in accordance with subsection 36(2) of the NSR at the expiry of the exemption, on or before the completion of the 12- to 24-month deferral period.

3.0 ISSUES AND COMMISSION FINDINGS

13. In making its decision, the Commission considered whether to exercise its discretion to exempt the HSS licensees from the application of subsection 36(2) of the NSR under section 7 of the NSCA and whether the exercise of that discretion would satisfy the parameters of section 11 of the GNSCR. The Commission issued questions to CNSC staff, through CMD 21-H101Q⁸, seeking further information on previously-requested regulatory relief and the resource requirements of FoF security exercises. The answers provided by CNSC staff, through CMD 21-H101.A, addressed these questions to the Commission's satisfaction.
14. CNSC staff recommended that the Commission grant HSS licensees the exemption from subsection 36(2) of the NSR, in the form of a 12- to 24-month deferral, depending on their current status within the 2-year cycle. In its submission, CMD 21-H101, CNSC staff submitted that the HSS licensees' request for exemption was merited and that the criteria of section 11 of the GNSCR would be satisfied. CNSC staff provided information pertaining to the effects of the COVID-19 pandemic on FoF security exercises across HSS licensees, ongoing verification activities at the HSSs, and a recommended schedule for the resumption of FoF security exercises. The specific maximum deferral date recommended by CNSC staff for conducting the respective FoF security exercises is prescribed information and therefore not elaborated in this record of decision.

COVID-19 Pandemic

15. The Commission considered the risks associated with the ongoing COVID-19 pandemic. CNSC staff recommended that the HSS licensees' request for a temporary exemption from subsection 36(2) of the NSR had merit due to the risks posed by attempting to perform FoF security exercises during the pandemic.

⁸ CMD 21-H101Q, *Questions from Commission Panel Member*, is not available to the public because it contains prescribed information.

16. CNSC staff submitted that conducting FoF security exercises under the current conditions would result in an increased risk of COVID-19 transmission among HSS licensee staff and CNSC staff. CNSC staff expressed that an outbreak of COVID-19 within the NRF membership of an HSS licensee could significantly impair the HSS licensee's ability to meet its NRF minimum shift complement. CNSC staff reported that each FoF security exercise involves NRF members from across all HSS licensees, exposing multiple HSSs to increased risk of COVID-19 transmission. CNSC staff further reported that essential exercise and planning activities are held face-to-face for security reasons, and that such activities pose an additional risk of COVID-19 transmission.
17. The Commission is satisfied that, given the risks posed by the ongoing COVID-19 pandemic, the request for a temporary exemption from subsection 36(2) of the NSR is justifiable and reasonable. The Commission agrees that force on force exercises pose a risk to the health and safety of persons, owing to the potential spread of infection. Further, the Commission is satisfied that the exemption will not pose an unreasonable risk to the environment or the health and safety of persons.

Verification Activities

18. The Commission considered the measures in place to ensure the secure operation of the HSSs. CNSC staff explained that temporary exemption from subsection 36(2) of the NSR would not relieve the HSS licensees from other nuclear security requirements, including under section 36 of the NSR, and that HSS licensees will maintain their respective NRFs through their 30-day security drill program, as per subsection 36(4) of the NSR.
19. CNSC staff reported that it continues to monitor the activities of HSS licensees under subsection 36(4) of the NSR through quarterly reporting to the CNSC, as per [REGDOC-3.1.1](#)⁹, and field inspections. CNSC staff explained that the 30-day security drills being conducted by HSS licensees are verified to be adequately challenging and in accordance with subsection 36(4) of the NSR. Additionally, CNSC staff confirmed that no non-compliances by the HSS licensees associated with subsection 36(4) of the NSR have been identified since the COVID-19 pandemic began.
20. The Commission is satisfied that measures are in place to ensure that the proposed temporary exemption would not jeopardize the ongoing security of the HSS licensees' facilities. Consequently, the Commission is satisfied that the proposed exemption would not pose an unreasonable risk to national security, nor would it result in a failure to achieve conformity with measures of control and international obligations to which Canada has agreed.

⁹ REGDOC-3.1.1, *Reporting Requirements for Nuclear Power Plants*

Force-on-Force Security Exercise Schedule

21. The Commission considered the scheduling of FoF security exercises and factors involved in defining the staggered FoF security exercise two-year cycle. CNSC staff submitted a recommended resumption schedule should a temporary exemption from subsection 36(2) of the NSR be granted.
22. CNSC staff explained that the FoF security exercises of all HSS licensees are scheduled using a staggered two-year cycle, such that multiple FoF security exercises do not occur simultaneously. CNSC staff reported that the resources and personnel required to plan and execute each FoF security exercise are significant, for both the HSS licensees and CNSC staff. CNSC staff expressed that, due to the COVID-19 public health measures and guidelines (e.g., travel restrictions), HSS licensees and the CNSC would be challenged to make available and deploy the necessary resources. The Commission agrees that the nature, scope, and extent of FoF security exercises are challenged by the limitations imposed by public health measures and guidelines.
23. The Commission understands that, owing to the shared and significant resourcing for planning and conduct, FoF security exercises are scheduled in a staggered manner and that rescheduling will therefore affect all HSS licensees. In its submission, CNSC staff proposed a resumption schedule in which all HSS licensees, inclusive of any that have not yet postponed a scheduled FoF security exercise, are exempted from the application of subsection 36(2) of the NSR in the form of a 12- to 24-month deferral. CNSC staff confirmed that, should the temporary exemption be granted, HSS licensees could be required to resume their respective security exercise schedules in accordance with subsection 36(2) of the NSR either on or before the expiry of the deferral period.
24. The Commission is satisfied with the deferral period and the schedule proposed by staff. The Commission is of the view that the proposed schedule would ensure that HSS licensees return to normal compliance with the NSR within a reasonable timeframe. The temporary exemption will therefore apply in this timeframe, after which time the requirement of subsection 36(2) will again apply.

4.0 CONCLUSION

25. The Commission has considered the request from the HSS licensees (Bruce Power, CNL, Hydro-Quebec, NB Power, and OPG) and CNSC staff's recommendations for a temporary exemption of the application of subsection 36(2) of the NSR.

26. The Commission concludes that the proposed exemption of HSS licensees from the application of subsection 36(2) of the NSR, in the form of a 12- to 24-month deferral, satisfies the conditions of section 11 of the GNSCR. The Commission is satisfied that granting the proposed exemption will not:
- pose an unreasonable risk to the environment or the health and safety of persons;
 - pose an unreasonable risk to national security; or
 - result in a failure to achieve conformity with measures of control and international obligations to which Canada has agreed.
27. Therefore, pursuant to section 7 of the NSCA, the Commission temporarily exempts HSS licensees from the application of subsection 36(2) of the NSR. This exemption is valid for a period of 12 to 24 months from the date that, but for the exemption, an HSS licensee would be required to conduct a FoF security exercise at its facility.
28. The Commission directs CNSC staff to administer the Commission's decision by following the proposed schedule presented in CMD 21-H101. The Commission expects that CNSC staff will issue formal correspondence to the HSS licensees clearly indicating the rescheduled date of their respective FoF security exercise and the resumption of the two-year cycle upon expiry of the exemption.
29. The Commission expresses its displeasure with the lateness of this request to temporarily exempt HSS licensees from subsection 36(2) of the NSR. While the Commission understands the complexity of the COVID-19 pandemic, it does not find the submission of the request, in March 2021, so long after the onset of the pandemic in March 2020, to be reasonable. The Commission notes that while the late submission date did not affect the outcome of its consideration of this matter, it is of the view that such requests should be made as soon as is reasonable.
30. HSS licensees will be required to resume their respective FoF security exercise schedules in accordance with subsection 36(2) of the NSR on or before completion of the 12- to 24-month deferral period.
31. The Commission expects that any subsequent delay in FoF security exercises will be brought to the Commission's attention for further consideration well in advance of such a delay.

**Timothy
Berube**

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Timothy Berube
Member,
Canadian Nuclear Safety Commission

June 21, 2021

Date