



Record of Decision

DEC 20-H106

Subject	Exemption under section 7 of the <i>Nuclear Safety and Control Act</i> of a class of person from subsection 9(4) of the <i>Class I Nuclear Facilities Regulations</i>
Date of Decision	July 14, 2020

RECORD OF DECISION – DEC 20-H106

Purpose: Exemption under section 7 of the *Nuclear Safety and Control Act* of a class of person from subsection 9(4) of the *Class I Nuclear Facilities Regulations*

Date of decision: July 14, 2020

Panel of Commission: R. Velshi, President

“Class of person” to benefit from this exemption: Defined
Exemption from subsection 9(4) of the *Class I Nuclear Facilities Regulations*: Granted

Table of Contents

1.0 INTRODUCTION..... 1
2.0 DECISION..... 2
3.0 ISSUES AND COMMISSION FINDINGS 3
4.0 CONCLUSION 6

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), a class of person from the application of subsection 9(4) of the *Class I Nuclear Facilities Regulations*³ (Class I Regulations) which provides that “*A certification expires five years after the date of its issuance or renewal.*”⁴
2. As a result of the COVID-19 pandemic, Ontario Power Generation (OPG), New Brunswick Power Corporation (NB Power) and Bruce Power (collectively “the licensees”) have temporarily postponed the conduct of their certification requalification testing programs. In April and May 2020, the licensees requested regulatory relief in the form of short-term extensions and/or an exemption from regulatory requirements in respect of the recertification of certified shift workers⁵ at the Pickering Nuclear Generating Station (NGS), the Point Lepreau NGS and the Bruce NGS.⁶ The licensees explained that their postponement of the requalification testing programs could result in the expiry of the certifications of certified shift workers, which could subsequently impact the licensees’ ability to continue to meet the minimum shift complement requirements.
3. CNSC staff carried out technical assessments of the licensees’ requests for regulatory relief in respect of certification requirements. CNSC staff were of the view that a temporary exemption from the operation of subsection 9(4) of the Class I Regulations for a “class of person” – as defined by the Commission according to parameters recommended by CNSC staff – would allow certified shift workers sufficient time to complete requalification testing while ensuring that licensees could continue to meet minimum shift complement requirements in a manner that would not compromise safe operation. Requalification tests and requirements are outlined in REGDOC-2.2.3, *Personnel Certification, Volume III: Certification of Persons Working at Nuclear Power Plants*,⁷ which forms part of the licensees’ licensing bases.
4. Only the Commission has the authority to grant an exemption from statutory requirements. A necessary part of granting an exemption in this matter is the definition of the class of person to whom that exemption would apply.

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 Statutes of Canada (S.C.) 1997, chapter (c.) 9

³ SOR/2000-204

⁴ Subsection 9(2) of the Class I Regulations specifies that “*The Commission or a designated officer authorized under paragraph 37(2)(b) of the Act may certify a person referred to in paragraph 44(1)(k) of the Act for a position referred to in a licence...*” (emphasis added). The five-year certification expiry specified in the subsection 9(4) of the Class I Regulations refers to the certification of a person as provided for by subsection 9(2).

⁵ Certified shift workers include reactor operator (authorized nuclear operator); unit 0 operator; control room shift supervisor; and plant shift supervisor (shift manager).

⁶ Requests received on April 29, 2020 from OPG (CMD 20-H106.1); May 5, 2020 from NB Power (CMD 20-H106.2); and April 24, 2020 from Bruce Power (CMD 20-H106.3). OPG did not request regulatory relief for certified shift workers at the Darlington NGS since no certifications were expiring in 2020.

⁷ CNSC Regulatory Document REGDOC-2.2.3, *Personnel Certification, Volume III: Certification of Persons Working at Nuclear Power Plants*, 2019.

Issue

5. In considering whether to grant the exemption under section 7 of the NSCA, the Commission was required to decide, pursuant to section 11 of the *General Nuclear Safety and Control Regulations*⁸ (GNSCR), whether the exemption would not:
 - a) pose an unreasonable risk to the environment or the health and safety of persons;
 - b) pose an unreasonable risk to national security; and
 - c) result in a failure to achieve conformity with measures of control and international obligations to which Canada has agreed.

Panel

6. Pursuant to section 22 of the NSCA, the President established herself to preside as a Panel of one Commission member to consider, pursuant to section 7 of the NSCA, the temporary exemption of a class of person from the operation of subsection 9(4) of the Class I Regulations. The Commission considered written submissions from OPG (CMD 20-H106.1), NB Power (CMD 20-H106.2) and NB Power (CMD 20-H106.3), and from CNSC staff (CMD 20-H106).

2.0 DECISION

7. Based on its consideration of the matter, as described in more detail in the following sections of this *Record of Decision*, the Commission concludes that, in exempting a class of person for a limited period of time from the operation of subsection 9(4) of the Class I Regulations, for the purposes of allowing sufficient time for the licensees to recommence certification requalification testing programs, the conditions of section 11 of the GNSCR are satisfied.
8. Therefore, the Commission exempts a class of person from the operation of subsection 9(4) of the Class I Regulations.
9. The “class of person” to whom this exemption applies is defined as including certified shift workers at a Class IA facility who meet the following criteria:
 - a) General: Certified shift workers with their CNSC certifications expiring between July and December 2020, and who have not completed within the last two years a written requalification test, a comprehensive simulator test or a diagnostic simulator test;⁹
 - b) Requalification testing: certified shift workers who have been recently exposed to a testing environment in a classroom or simulator;

⁸ SOR/2000-202

⁹ Per REGDOC-2.2.3, Volume III, Section 33 which states “*During the period of certification, each reactor operator, unit 0 operator, control room shift supervisor and plant shift supervisor shall complete the written and simulator-based requalification tests referred to in the (nuclear power plant) licence.*”

- c) Operational performance: certified shift workers who have maintained their competency to perform the duties of their certified position, including an attestation of competence from the licensee;¹⁰ and
- d) Continuing training: certified shift workers who have completed continuing training, including knowledge and simulator-based evaluations.

The Commission accepts CNSC staff's recommendation in CMD 20-H106, section 2.2.2, Table 1: *Review criteria and supporting information required for licensees* in respect of the information that the licensees must submit for the purposes of CNSC staff confirmation of which individual certified shift workers fall within this "class of person."

- 10. This exemption is valid for six months from the date that, but for the exemption, would be the expiry date of the certification for those individuals in the class. In practical terms, the exemption will have the effect of extending by six months the duration of the certification period for those individual certified shift workers who fall within the class.
- 11. The Commission directs CNSC staff to administer its decision in this matter as recommended in CMD 20-H106, section 2.2.3, Recommendation #3. The Commission expects that CNSC staff will issue formal correspondence to licensees in respect of those certified shift workers who CNSC staff has confirmed fall within the class defined above. This correspondence shall clearly indicate the six-month period of the exemption by way of start and end dates of the exemption as applied to each individual who benefits from the exemption.
- 12. The Commission expects that the certified shift workers who will be exempt from the operation of subsection 9(4) of the Class I Regulations by way of this decision will undergo requalification testing in order to be recertified via the usual CNSC processes by the end of the certified shift worker's six-month exemption. Of course, with the expiry of the exemption, the application of subsection 9(4) of the Class I Regulations will once again take effect, if the requalification/recertification process has not taken place within the period of the exemption.
- 13. The Commission directs the licensees to provide CNSC staff with plans to resume their certification requalification testing programs and an updated requalification and initial examination schedule within three months of the date of this decision.

3.0 ISSUES AND COMMISSION FINDINGS

- 14. In making its decision, the Commission considered whether to exempt a class of person from the application of subsection 9(4) of the Class I Regulations. The Commission also considered how to define the class of person to whom this exemption would apply.

¹⁰ The Commission understands that this attestation would be provided by a senior representative of the licensee that has the authority to make such an attestation.

15. In its submission, OPG informed the Commission that the certifications of four certified shift workers at the Pickering NGS would expire in 2020. NB Power submitted that the certification of one certified shift worker at the Point Lepreau NGS will expire in 2020. Bruce Power submitted that the certifications of 13 certified shift workers at the Bruce A NGS will expire in 2020. CNSC staff informed the Commission that none of the certifications of certified shift workers at the Darlington NGS will expire in 2020.
16. CNSC staff submitted that, in response to the COVID-19 pandemic, licensees have restricted site access, reduced project work and reduced in-class personnel training and testing. CNSC staff also reported that licensees have implemented restrictions in respect of training class sizes; refresher and control room continuing education classroom training; and requalification test practice sessions and simulator-based training.
17. The licensees' operating licences each include a licence condition that requires them to meet the conditions outlined in REGDOC-2.2.3, Volume III. In order to be recertified, certified shift workers are required to meet the requirements outlined in REGDOC-2.2.3, Volume III, Section 33, *Requalification Tests*.¹¹
18. The Commission notes that, pursuant to paragraph 9(3)(c) of the Class I Regulations, the certification of personnel can be renewed only "... *after receiving from a licensee an application stating that the certified person (c) has successfully completed the applicable requalification tests referred to in the licence for renewing the certification.*" Therefore, if the certified shift workers cannot undergo certification requalification testing programs, their certifications cannot be renewed.
19. The Commission considered the factors reviewed by CNSC staff in its technical assessment of the licensees' regulatory relief requests in respect personnel certifications and CNSC staff's subsequent recommendation for the exemption of a class of person from the application of subsection 9(4) of the Class I Regulations. CNSC staff submitted that its assessment considered
 - the duration of the proposed exemption;
 - the number of certified shift workers for whom the exemption would be sought in comparison to the total number of currently certified personnel; and
 - the number of shifts that the certified shift workers for whom the exemption would be sought had performed in the past six months and the number of shifts that they will likely perform over the next six months.
20. CNSC staff reported that its technical assessment showed that the exemption from the application of subsection 9(4) of the Class I Regulations of certified shift workers whose certification is expiring in 2020 would have a minimal impact on the safe operations of NGS and that the expected impact to worker competency is low. CNSC staff also reported that the exemption would allow licensees to continue to meet minimum shift complement requirements.

¹¹ REGDOC-2.2.3, Volume III, Section 33 states that "*During the period of certification, each reactor operator, unit 0 operator, control room shift supervisor and plant shift supervisor shall complete the written and simulator-based requalification tests referred to in the (nuclear power plant) licence.*"

21. The Commission notes that, in their submissions, the licensees requested regulatory relief in the form of six-month extensions in respect of the certification of certain certified shift workers and/or an exemption from the Class I Regulations. CNSC staff recommended that the Commission grant an exemption to certified shift workers whose certification expires between July and December 2020, with the exemption valid until June 2021. CNSC staff submitted that such an exemption would allow the certified shift workers sufficient time to complete the requalification testing requirements in the midst of the COVID-19 pandemic and the restrictions that had been put in place in respect of the certification requalification testing programs by licensees. CNSC staff submitted that its technical assessment showed that the conditions of section 11 of the GNSCR would be satisfied if the Commission were to grant the exemption.
22. Following its assessment of the information submitted in this matter, the Commission is satisfied that an exemption of a class of person from the expiry of certification as set out in subsection 9(4) of the Class I Regulations – with the exemption valid for no more than six months – is adequate. The Commission is of the view that this exemption would allow the licensees to resume their certification requalification testing programs and allow certified shift workers to be recertified within that time. The Commission is satisfied that such an exemption will not pose an unreasonable risk to the health and safety of persons or the environment.
23. In considering the exemption, the Commission was required to consider how to define the class of person to whom the exemption would apply. The Commission considered the criteria proposed by CNSC staff as detailed in section 2.2.2 of CMD 20-H106 and concludes that these criteria are acceptable in defining the class of person, to whom this exemption applies.
24. The Commission considered CNSC staff’s recommendation in CMD 20-H106, section 2.2.2, Table 1, which refers to the information that licensees would be required to submit to establish who fits in the class. In respect of the “Requalification testing” criterion, the Commission understands that ‘recently exposed to a testing environment’ means that the certified shift worker has been exposed to a testing environment within the last two years.
25. In respect of the “Operational performance” criterion, the Commission understands that that a certified shift worker’s competency will be assessed by CNSC staff through a review of number of shifts performed by the worker over the last year; whether the worker was assigned to an operationally-focused position and a description of that assignment (if applicable); and any event reports and remedial training associated with a worker’s performance issues. The Commission also understands that the licensee’s attestation of a certified shift worker’s competence shall be made by a senior representative of the licensee that has the authority to make such an attestation.
26. The Commission finds that the review criteria and supporting information that licensees would be required to submit to the CNSC is comprehensive. The Commission is satisfied that the information will allow CNSC staff to establish whether a certified shift worker falls within the class of person for the purposes of the exemption from the operation of subsection 9(4) of the Class I Regulations.

27. The Commission considered CNSC's staff recommendation regarding its administration of the Commission's exemption decision, as detailed in CMD 20-H106, section 2.2.3 Recommendation #3. The Commission is satisfied that CNSC staff's plans for the administration of the Commission's decision is adequate.

4.0 CONCLUSION

28. The Commission has considered the requests for regulatory relief submitted by OPG, NB Power and Bruce Power, and CNSC staff's recommendations for an exemption, pursuant to section 7 of the NSCA, of a class of person from the application of subsection 9(4) of the Class I Regulations.
29. The Commission concludes that, in exempting a class of person from the application of subsection 9(4) of the Class I Regulations during a limited period, the conditions of section 11 of the GNSCR are satisfied.
30. Therefore, the Commission exempts a class of person from the application of subsection 9(4) of the Class I Regulations. This exemption is valid for six months from the date that, but for the exemption, would be the expiry date of the certification for those individuals in the class.
31. The Commission directs CNSC staff to administer the Commission's decision to confirm which certified shift workers fall within the class to benefit from the exemption by using the criteria as recommended by CNSC staff in CMD 20-H106, Table 1: *Review criteria and supporting information required for licensees*.

**Velshi,
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July 14, 2020

Rumina Velshi
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Date